Supreme Court, U.S.
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No. 99 459

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1998

Stephan Willett,

Petitioner

v.

The City University of New York **Law School** at Queens College, The City University of New York; The City University of New York Law School At Queens College; W. Ann Reynolds, Chancellor; Haywood Burns, Dean & President; Victoria Ortiz, Dean of Students and Prosecutor; Jill Soffiyah Elijah, Professor, Disciplinary Chairperson; David Nadvorney, Professor; Susan Markus, Professor; Desiree Hopkins, Student; Jay Rosenbaum, Student; Dave D.Fields, Personal Counsel to Chancellor Ann Reynolds, Records Officer, Bursar and Assistant Dean; Jolli Brown, Assistant to Dean of Students.

On Petition for Writ of Certiorari
To the Second Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI and APPENDIX

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Two Main Issues Presented on Appeal

Petitioner requests that the dismissals of the following causes of actions affirmed on appeal be reviewed and a writ granted.

1. The dismissal of the Free Speech cause of action based on appellees conduct in conducting a disciplinary hearing and taking evidence involving a complaint, later dismissed, charging the petitioner with misconduct due to the petitioner's reference to a fellow student's children as "zebra children" in a private conversation.

2. The dismissal of the Due Process cause of action based on the appellees conduct in holding a disciplinary hearing against the petitioner before, during and after his first year of law finals that did not provide adequate notice of the charges, particularly the petitioner was not made aware of the written complaints made months before the hearing or the names of the witnesses until during the third day of the disciplinary hearing.

The above two issues are the most egregious and are clearly supported by the facts and federal case law. However, the issues below are argued for two reasons. One, these issues were properly pled and should not have been dismissed. Two, the issues below and their relevant facts provide critical support for the first issue above as pled in the petitioner's last amended complaint, dated October 6, 1997, Exh. J. In addition, the facts pled below are critical to understand the circumstances surrounding the first issue above, but more importantly, they provide support for the lack of "credibility for the reasons stated" by appellees for conducting the disciplinary hearing in the first place that are found in the appellees responses and expected in their answer. The District Court in its last decision attempts to limit the petitioner's complaint as indicated by "plaintiff also adds allegations concerning claims earlier dismissed by the court. In its February 18, 1997 memorandum and order the court enjoined plaintiff from filing any further suit involving those claims. The court will therefore disregard all allegations appearing in numbered paragraphs 19 to 59 of the complaint", Exh. K or page 126 of appendix. The allegations in "paragraphs 19 to 59" are critical to the free speech issue above, and the other free speech issues presented in this writ.

3. The dismissal of the Free Speech cause of action based on appellees conduct in making a complaint, later dismissed, to the Law School Admission Services (LSAC) reportedly due to petitioner's alleged fraudulent report of his GPA on his resume after the petitioner questioned the same appellee's performance of her job responsibilities.

4. The dismissal of the Free Speech cause of action based on appellees conduct involving their objections and refusal to follow the Trade Readjustment Act (TRA) program after the petitioner requested

and later demanded the appellees to follow the TRA program and requested Senator Padavan for assistance in the matter.

5. The dismissal of the Free Speech cause of action based on appellees conduct in making a complaint, later dismissed, that the petitioner gained unauthorized entry into the law school president's office to discuss the TRA program after the petitioner requested and later demanded the appellees to participate in the TRA program.

6. The dismissal of the Free Speech cause of action based on the appellees conduct of initiating and holding a disciplinary hearing after petitioner (1) questioned an appellee regarding the performance of her job duties, (2) his requests and demands to appellees to participate in the TRA program, (3) his reference to a fellow students children as "zebra children" and (4) his successful small claims lawsuit filed against CUNY Law School.

7. The dismissal of the TRA procedural violation cause of action [19 U.S.C. 2311(a)(4), etc.] based on the appellees conduct in refusing to follow the billing procedures of the Federal TRA program.

8. The dismissal of the Free Speech cause of action based on appellees conduct of preventing the petitioner from entering the law school premises after the petitioner served his suspension and he had registered for his second year of law classes after petitioner (1) questioned an appellee regarding the performance of her job duties, (2) his requests and demands to appellees to participate in the TRA program, (3) his reference to a fellow students children as "zebra children" and (4) his successful small claims lawsuit filed against CUNY Law School, (5) filed a Federal lawsuit against the appellees that is the basis for this writ and (6) filed a an Article 78 Proceeding against the appellees in the Supreme Court, Queens County regarding the petitioner's suspension.

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Stephan Willett, petitioner pro se, being duly sworn, deposes and says:

Subject Matter and Appellant Jurisdiction

The causes of action alleged involve violations of the First Amendment, 14th Amendment Due Process clause and Federal Trade Act of 1974, among other federal laws, to establish proper subject matter jurisdiction. Appellate jurisdiction is based on the fact an appeal was made on June 10, 1998 from a final order from the Eastern District Court of New York dismissing petitioner's complaint consisting of about 13 causes of action and the Second Circuit Court of Appeals decision, Exh. P denying petitioner's appeal filed on May 4, 1999.

The Second Circuit appeal and this writ allows all decisions make in the district court which dismissed causes of actions to be reviewed because the dismissed causes of action in the earlier decisions were interlocutory decisions. Judge Nickerson in the District Court stated "petitioner's fifth, seventh, and eighth claims were present in his last 'amended complaint' and were dismissed in the second order. The Second Circuit dismissed petitioner's appeal of those rulings", Memorandum and Order, February 5, 1997, p. 5, Exh. I.

As discussed in detail later, this is one of the many oversights by Judge Nickerson, which happens to involve appellant procedure. Petitioner's appeals to the Second Circuit were of right only because they were appeals from denials for "preliminary injunctive" relief. The allegedly "dismissed" causes of action would not be appealable at the previous stages of this case because they were interlocutory decisions that are only appealable after a final judgment (Cohen Doctrine), which is the present stage of this case. In addition, the petitioner challenges the Second Circuit to find where in Judge Nickerson's Memorandum and Order, dated March 22, 1996 (the "second order"), Exh. G it says the word "dismissed". The decision does say "dismiss", but allows the petitioner to file again "to the extent stated below" with only some "guidelines", but with no limitations. Again, the petitioner precisely attempted to follow the Judge's "guidelines".

Lastly, the Second Circuit's three previous decisions denying preliminary injunctive relief, Exh. T are enclosed. Actually, the second to last Second Circuit decision, dated April 23, 1997 mistakenly sua sponte determined that the petitioner's third motion for preliminary injunctive relief was not a motion for preliminary injunctive relief, but was a non-final order and dismissed the appeal. Therefore, neither the District Court or Second Circuit has ever ruled on (or I bet read) the additional facts added to the petitioner's last amended complaint.

Petitioner has done the best humanly possible to present the atrocious set of facts in this case and only asks that they be recognized. Petitioner now finally understands and realizes the government has become too big and bureaucratic and many times does not care or have

the time (petitioner is now a Department of Commerce employee), but petitioner asks the honorable, knowledgeable and caring members of this court for their help, because the petitioner honestly cares and desires to make a change for the better. In addition, after petitioner has completed law school and passed a bar he believes he should not be prevented from practicing law based on his moral character due to all the falsifications perpetrated by CUNY Law School, a public American law school.

Why Should This Case Be Heard and a Writ Granted

A brief introduction to the case to gain the court's interest. This case shocked the senses of the petitioner's fellow law students at the City University of New York (CUNY) at Queens College School of Law ("CUNY Law School") when the petitioner, a fellow second year student was initially expelled from CUNY Law School for three years in June 1994 after he referred to a fellow student's children as "zebra children". Exh.U is a CUNY Law School article regarding the resulting one year suspension and petitioner's photograph. The petitioner had referred to a fellow student's children as "zebra children" in a descriptive sense because this naïve law student had not learned how to properly address an interracial child. However, the petitioner had recognized CUNY Law School's aberrant conduct early as portrayed by the small claims judgment granted petitioner against CUNY Law School for their incorrect residency determination in April, 1994, coincidentally the same month the petitioner was charged with misconduct at CUNY Law School.

However, even more astounding, after the petitioner's oral argument before the Second Circuit Court of Appeals on April 22, 1999 for this case he was questioned by the Federal Bureau of Investigations (FBI) because of an innocent letter, Exh. Q, he sent to the three justices after the appeal. As stated in the letter, the petitioner felt compelled to express concern due the unexpected questions regarding collateral estoppel and res judicata from the justices because these issues which were not raised or briefed whatsoever by either side. In the letter, Exh. Q, the petitioner innocently mentioned the shooting at Columbine High School to obviously emphasize the importance of writs like this one.

As the letter, Exh. Q, states and the Second Circuit's decision portrays, the Second Circuit was obviously looking for the easiest legal theory to dismiss the case, regardless of the facts presented or the real facts. The three last decisions by the Second Circuit, Exh. T, are each one line long, even though numerous new facts and new legal theories were introduced in the lower court to insure they were raised below. It seems, the Second Circuit usually only gives an appellant one shot, especially a pro se appellant. Therefore, the petitioner sincerely feels based on the federal case law that there are federal issues and out of desperation the petitioner is compelled to take his last and only shot by

filing this writ and hope that such blatant and abhorrent injustices are correctable at this day and age.

After the petitioner's letter, Exh. Q, the Sheriff at the Second Circuit Court of Appeals called the petitioner at his residence in Alexandria, VA and expressed that the justices raised concern regarding the tone of the letter. The Sheriff subsequently stated that the petitioner should not correspond whatsoever with the justices or the court to clear up any misunderstanding (thus, also terminating the petitioner's right to motion for reargument). The Sheriff even threatened that the petitioner's career as an attorney was in jeopardy based on the letter to the justices. Subsequently, the FBI summoned the petitioner to FBI headquarters in Washington, D.C. for questioning. These facts are so ironic because this type honesty (or naivete) concerning free speech by the petitioner is exactly what caused this case to erupt at CUNY Law School. These facts are presented, along with a few other examples below of outrageous conduct by public officials, to show that the U.S. Supreme Court needs to address at least the free speech issues in this case due to the issue's public importance, not to mention the limited federal law regarding university discipline (not the misplaced employment law that the courts' rely on) and the conflicts in/or lack of appellate decisions.

Ironically, after petitioner's suspension from CUNY Law School numerous hate speech incidents erupted at CUNY Law School. Attached are articles to document other outrageous reactions by public officials at CUNY Law School, Exh. R and reactions by the public to administrative hangings the petitioner was subjected. Remember, CUNY Law School is the one the Second Circuit found "a white Caucasian male" stated a cause of action, David Davis v. Halpern _____ F.2d _____ (2nd Cir. 1992). The recent example in the White House regarding President Clinton's affairs is another example of public officials using their public power for obviously personnel motives. The bipartisan vote on the impeachment issue clearly portrays the presidential affair issue was not factual whatsoever, but personally motivated. Another recent example, that erupted from the Columbine case occurred in Richmond, VA when a "High School student whose blue hair got him suspended in a safety crackdown", The Washington Times, June 4, 1999, page C5, Exh. T had to be reinstated.

The Supreme Court is not suppose to be politically swayed. Petitioner hopes this is still the case and that the Supreme Court will usurp its power and use the U.S. Constitution to start to curve individuals that serve in public positions use of power for personal, political, unlawful and/or discriminatory purposes. Secondary effects of such a purposeful decision by the U.S. Supreme Court will result in the public's awareness of their ability to effect society in more productive forms instead of inundating state officials with hundreds of calls a day as in

Maryland in August, 1999 to "rat out their neighbors for their unlawful water consumption" due to the drought. Cursory effects in accepting this writ will force courts to deal with such blatant facts as the ones presented in this writ, instead of allowing $250,000 court cases and their extortionate effects to belittle our society.

The one line sentence in the Second Circuit's decision and their obvious neglect of the numerous issues presented in the petitioner's 60 page appellate brief (that included extensive memorandum of law) exemplifies the personal animosity that is allowed to run ramped in public service in this country. Such personal animosity inhibits job performance and fairness and this court needs to address and attempt to curb its appearance and place in public service. Based on this reason alone, a writ of certiorari should be granted and the facts in this case should be used to send a message to this country's public service personnel to curb their personnel attacks while performing public duties.

At the very least, with this writ the petitioner desires that a court correctly recognize and understand the relevant distinguishing facts in a decision for or against the petitioner, to at least warn other naïve students of civics classes throughout America that our Constitution is visionary, but has it limits. The relevant facts to distinguish this case in its unique university setting have not been iterated in a decision by the District Court or the Second Circuit.

Petitioner asks reviewers of this brief to be open to the numerous facts and law presented in this writ which occurred during petitioner's four (4) years of study at CUNY Law School that were dismissed for not stating a cause of action. Many of the facts are unbelievable and atrocious by the petitioner's standards, especially at a public American law school. The facts have been curtailed as much as possible due to page limitations and therefore, only 8 of the causes of action out of the 14 causes of action brought up in the last appeal to the Second Circuit are presented in this writ. This case has been up on appeal numerous time before the Second Circuit Court of Appeals, Exh. T, while the petitioner finished his law studies at CUNY Law School, however, the previous appeals were for preliminary injunctive relief only, not for whether a cause of action was pled and the petitioner now finally realizes unexpectedly the extremely high standard required for injunctive relief. The third and last appeal for emergency injunctive relief to the Second Circuit was made to enable the petitioner to finish his last year of law studies at UCLA, his alma modern, as a visiting law student. Incredibly, this case is still effecting petitioner's employment possibilities, his family's future and their bearing of children and has prevented his admission to a state bar.

Originally, the petitioner naively believed he could handle this case on his own and win this case and dismissed his hired counsel.

Recognize, cases like this one was the reason the petitioner, although an upper middle class citizen from North San Diego, near Rancho Santa Fe, went to law school. The petitioner, now a law school graduate, feels he has failed in this case, the petitioner allegedly was unable to even state or plead a cause of action based on the atrocious conduct at this law school. However, the present writ is important because there are important societal ramifications brought forth in this case and the many other cases like it that the U.S. Supreme Court needs to address.

Secondly, facts were completely overlooked and misunderstood in the district court, facts that were not addressed in any District Court or Second Circuit decision. Based on these facts, the petitioner feels confident there is sufficient basis to grant this writ in numerous respects. In addition, the inadequate notice facts with extensive due process and free speech case law was only briefed recently and was only briefed before the Second Circuit[1] in the last appeal, it took more than three (3) years after the case was initiated to brief these facts. The petitioner felt so confident about this appeal and the facts in this case that he presented some of his intercircuit case law to the Second Circuit, and the limited case law available regarding university, non-academic and non-employment disciplinary hearings. However, the Second Circuit obviously completely ignored the facts and law in this case based on their one line decision and summons of the FBI. However, the conflicts in intercircuit decisions with the limited case law involving university discipline provides another reason for this writ to be granted, 60 Minutes even provided a story on this issue shortly before the petitioner's discipline that can be distinguished because it involved "young and impressionable" high school students, not adults in college.

Background of the Petitioner

The petitioner, was a somewhat flamboyant freewheeling UCLA engineer in 1993, who had been honorably discharged from pilot training in the United States Air Force and left his position at McDonnell Douglas Corporation on Space Station Freedom in Southern California to travel across America to attend law school. The petitioner had completed approximately five (5) trips around the world before he started law school in August, 1993 at the age of 28. The petitioner desired to see his native country, thus he packed his belongings into a truck and traveled across America to start law school at the City University of New York (CUNY) at Queens College ("CUNY Law School").

After the petitioner's extensive travels to Guadalcanal, Singapore, Amsterdam, Sydney, etc., New York appeared on the surface similar to the many other cities he had visited. After studying for about nine (9) months during the petitioner's first year of law studies everything

[1] In addition, the inadequate notice case law was not briefed in the district court.

seemed satisfactory. However, now the petitioner looks back to the day he entered CUNY Law School and he remembers more than one student saying, "watch out at this law school". The petitioner asked "what do you mean" and the fellow students would say "just watch out here". The petitioner naively could not understand what the students could mean. Ironically, the petitioner had never learned or had been sheltered from the devious and underhanded side of some individuals, a side he suddenly and unexpectedly faced when the petitioner was charged with behaving inappropriately on eight (8) different occasions during his first year of law studies[2], with no forewarning whatsoever. The petitioner is a very strong willed individual, who went to law school to learn how to defend himself and others. However, after the disciplinary hearing partially described in this appeal, the petitioner felt he could not put on defense and did not put on a defense to the charges. No defense was presented to the charges after consulting with counsel, after all the unfair procedures used against the petitioner, after the numerous falsifications at this public law school, after the precarious conduct by appellees and due to the precarious circumstances in which the disciplinary hearing was conducted, to mention only some of the reasons. The appellees precarious conduct is succinctly exemplified in Exhibit C, that contains all the documents used to initially expel the petitioner for three (3) years for the ridiculous GPA fraud charge.

After the petitioner successfully completed his first year of law studies, he was suspended from law school for one year and he was, and still is in disbelief at the suspension he suffered, along with the court's acquiescence toward such conduct and the high standards required to obtain a preliminary injunction. However, the petitioner is still fighting hard because he knows he is right. The petitioner's strong feelings toward CUNY Law School's and administrators' conduct with his outspoken, but honest opinions toward such conduct is a major part of the reason the petitioner was suspended. These strong feelings is the reason the petitioner has persisted with this appeal and he is now sure this is why he was destined for law school. The petitioner's persuasion skills could be better and feels his direct, but too honest a nature was part of the reason he was suspended from CUNY Law School and why the petitioner has not succeeded with this case, yet, absent the courts' prejudices toward pro se litigants with a case that contains incredulous conduct by a law school. For example, charging a student with misconduct for a "zebra" comment. In addition, the petitioner is still dumb founded by the fact such egregious conduct directed toward other

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[2] Actually, one inappropriate behavior allegedly had occurred when the petitioner submitted his law school application in January, 1993, Exh. C. However, the petitioner was not notified of his impropriety until eight (8) months after law school had started, a year and a half later.

law students presently continues at CUNY Law School and law students must endure such hateful conduct at a public American law school from both students and administrators.

The Petitioner Today

The petitioner today is assuming the responsibilities of a patent attorney at another hub of America's infrastructure, Washington, D.C. The petitioner has married a woman of Greek descent and was recently married in Greece. The petitioner's wife is currently a psychology professor who was recently honored for her incredulous accomplishment in achieving her doctorate degree in only three (3) years. The petitioner seems to be back on the right track again, however, there was a reason the petitioner went to law school, achieved his juris doctorate and continued at such an aberrant law school like CUNY[3].

The petitioner must travel soon personally to met with the Florida Character and Fitness Committee regarding his suspension from CUNY Law School so they can determine whether he has the moral character to practice law. After passing the bar in Florida almost two years ago, the petitioner is still waiting for a response from the Florida Character and Fitness Committee, therefore, the petitioner may still be unable to practice. The petitioner and his family have paid too high a price for his speech and conduct. The effects of conduct like this by public officials will continue to be reverberated throughout the country as people speak out through their actions. Such precarious conduct by CUNY Law School has had and hopefully will have much farther reaching consequences in America, through this appeal, than only thwarting the petitioner's desire to be admitted to practice law, as was sought and accomplished by CUNY administrators.

The petitioner completed law school against all odds after the petitioner's one year suspension and the continued retaliation the petitioner was subjected to during the subsequent three (3) years required to finish his law studies. However, now the petitioner may be denied the privilege to practice law by state moral character and fitness committees based on the retaliatory suspension and CUNY Law School's responses to state moral character and fitness committee's questions, as seen by the state bars extensive inquiries[4]. Presently, the petitioner has responsibility for his family, however, even after the suspension and loss of career opportunities for the petitioner, his father, who is a retired air force pilot and prominent business man in Southern California, his parents' family and his new family, support the petitioner and this appeal.

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[3] Recognize, the appellee's offered to drop the suspension from the petitioner's educational record twice if the petitioner did not return to CUNY Law School.

[4] For example, the Florida Character and Fitness Committee requested copies of all pleadings filed in the state and federal cases related to the petitioner's suspension.

The Case History

After suddenly and unexpectedly being suspended after the petitioner's first year of studies the petitioner hired an attorney who motioned unsuccessfully for a preliminary injunction to stay the petitioner's suspension. An attorney was required because the petitioner was initially expelled from law school and it was clear this public American law school was retaliating. For example, the expulsion charge was completely dropped after an independent review by the LSAC of the exact same GPA complaint found "by unanimous vote ... that misconduct had not occurred" (underline in original). The GPA charge and the erroneous expulsion poignantly highlights the appellees retaliatory motives.

Subsequently, the petitioner motioned the district court three more times for a preliminary injunction during his last three (3) years of law studies as (1) more facts became available, (2) appellees conduct further violated federal law and (3) there was time, energy and money to attempt to adequately present the facts. Four decisions denying three preliminary injunction motions and ultimately dismissing all the causes of action for failing to state a cause of action, including the "zebra" cause of action, are the basis for this writ. Petitioner's appeal to the New York Court of Appeals, which was clearly based solely on state bylaw violations resulting from his suspension as shown by the district court's decision, Exh. I resulted after appellees motion to dismiss based on collateral estoppel or res judicata reasons, was denied. The last state appeal was made after motions to renew were denied based on the newly discovered facts that resulted in the facts to support the last preliminary injunction motion in this case.[5] The state courts have completely ignored the poignant state bylaw violations that can be discerned from a careful reading of the facts in this brief. Petitioner now really recognizes the need for the federal courts to limit the states' actions.

Some of the original causes of action have been broken up into more causes of action with additional numbers added in this brief. This is why there are seven (7) issues involving free speech, while there were only four (4) numbered free speech causes of action in the Amended Complaint, dated August 21, 1996, Exh, H. Recognize, the facts to

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[5] Only one of the petitioner's numerous causes of action was dismissed for res judicata or collateral estoppel reasons in Judge Nickerson's May 5, 1998 decision, Exh. K. However, the exact same issue was extensively briefed in January, 1997, but, the same issue was not dismissed in Judge Nickerson's February 5, 1997 decision, Exh. I, as will be discussed later. Petitioner has been very careful from the start of this case not to plead or continue with state causes of action, after the federal court abstained, that were part of the Article 78 Proceeding. However, some of the facts to support the state causes of action were integral to the federal causes of action and other facts were mentioned for their persuasiveness.

support the additional causes of action outlined in this brief were pled and additional support for the causes of action can be found in the first two complaints. The petitioner has repeatedly rearranged facts and added and deleted facts in the four different complaints to attempt to satisfy the statutes and appease the district court's "guidelines". The appendix is limited due to the fact the pleadings (including affidavits of fact and documentation) filed in this case were sporadic, numerous and would be convoluted and time consuming to include and verify. The petitioner wrote this appeal with the understanding that the full record would be at the Supreme Court's disposal. An extensive appendix was included due to the fact the petitioner believes the facts necessary to substantiate the causes of action can be found from the last two complaints, which are included in the appendix, for the court's convenience and to document the incredulous facts that resulted at this public American law school. Occasionally, references in this writ are made to affidavits to support a motion if the court wants to find further verification that the facts were pled in the district court.

Outline of the Brief

Alleged facts to support each cause of action are succinctly summarized below and the facts are followed by extensive case law. Support for each fact can be found in the record, most of the facts were pled a second time in the August 21, 1996 Amended Complaint, Exh. H. Cites for each fact in this brief are not always included since some of the facts where introduced in the first two complaints, which are not in the appendix. Note, only one of the facts in this case has been disputed by the appellees, as of this date. For example, only one factual affirmation has been filed in both the state and federal cases by the appellees, which was back in August, 1994 and appellees affirmation has been contradicted by two individuals' affirmations, see Exhibit C.

First (1st) Free Speech Cause of Action

The pled facts allege the petitioner inappropriately, but honestly referred to fellow student's children as "zebra children" in a descriptive sense for lack of a better word. About 30 days after the petitioner's statement he was charged with misconduct, Amended Complaint, August 21, 1996, para. 55, Exh. H. Judge Nickerson's second to last decision encouragingly stated in reference to these facts that "the court cannot say as a matter of law that the allegations in the compliant cannot support such an inference", Memorandum and Order, February 5, 1997, p.11, Exh. I and allowed the petitioner to unnecessarily amend his complaint. Unnecessary since amending the complaint was moot in light of the decision indicating that a cause of action could be "inferred" from the facts. However, in Judge Nickerson's subsequent Memorandum and Order, dated May 5, 1998, Exh. K he dismissed this cause of action based on the same set of facts. In any event, the sequence of events

shows a cause and effect relationship indicating the appellees' "zebra" misconduct complaint toward the petitioner was a result of the petitioner's inappropriate reference to the student's children and a cause of action was properly pled.

The only disparity Judge Nickerson elude to in his last decision, Exh. K, in the more than necessary facts pled, to explain why he changed his mind with regard to this cause of action was that the petitioner's "allegation that neither Ortiz nor Brown investigated the complaints is conclusory, and in any event is contradicted by other allegations in the complaint concerning Ortiz's request that the individuals who complained of [petitioner's] conduct make a written report" (underline added), Memorandum and Order, dated May 5, 1998, p. 9, Exh. K. Judge Nickerson has taken a very biased position on these facts at this stage of the proceedings, especially with the numerous facts that indicate that there were other reasons for appellee, Ms. Ortiz to request individuals to "make written reports". For example, the other facts pled that show appellee, Ms. Ortiz was motivated by retaliatory reasons were: (1) the baseless GPA complaint she made to the LSAC; (2) her deceptive method to obtain the petitioner's educational record; (3) her falsification to the petitioner in February, 1994 that she had not filed the GPA complaint with the LSAC three (3) months earlier in November, 1993; and (4) her false affirmation filed in court regarding the GPA complaint, Amended Complaint, August 21, 1996, para. 38, Exh. H. The above alleged facts show Ms. Ortiz may have requested individuals to make "written reports" based on non-investigative motives. Second, Judge Nickerson has made an assumption appellee, Ms. Ortiz asked individuals to make written reports to investigate the complaints. The pled facts indicate there were other motives for requesting students to make the written reports. Third, appellee, Ms. Ortiz did not need written reports to investigate the complaints. As discussed below, the written reports were only requested so appellee, Ms. Ortiz could retaliate against the petitioner by initiating and conducting a disciplinary hearing.

The Assistant Attorney General in their motion to dismiss cited facts involving the grade point average, the phone usage, the computer usage and illegal entrance into the president's office administrative complaints. All the above alleged baseless administrative complaints are relevant to show the disciplinary hearing was initiated due to the petitioner's "zebra" comment complaint, among other retaliatory motives. The above baseless administrative complaints' facts cited by the Attorney General are the same facts the Assistant Attorney General later asserts are not present with their statement that there are "no factual allegations showing that the multi-count disciplinary charge [hearing] would not have been brought but for the 'zebra child' count'". The Assistant Attorney General's recitation of facts is circuitous reasoning that is disjointed and

is premised on the same facts alleged in the complaints. The above baseless administrative complaints' facts cited by the Attorney General show that, but for the "zebra" comment charge and the retaliatory motives of the appellees, there was no basis or reason to initiate the disciplinary hearing because the facts show there was no other reason to have the disciplinary hearing except for the "zebra" charge and possibly other retaliatory motives described below. In any event, this cause of action is based on charging the petitioner with the "zebra" charge, not on initiating and conducting the baseless disciplinary hearing.

Secondly, as stated above, Judge Nickerson decided that based on the petitioner's pled facts that concluded that appellees, Ms. Ortiz and Ms. Brown did not investigate the charges that this fact was "conclusory". Based on the facts pled, the above conclusion by Judge Nickerson is not supported. First, petitioner pled he was never notified by anyone that he had behaved inappropriately or of any investigation for the five (5) months after the complaints were made and before being charged, Amended Complaint, August 21, 1996, para. 54, Exh. H. Incredulously, however, appellee, Ms. Ortiz stated to the disciplinary committee on the record that the petitioner was notified by appellee, Ms. Brown of the complaints and the investigation before being charged, even after, appellee, Ms. Brown who had testified earlier did not testify to these facts. The facts pled indicate the petitioner was never notified of the eight (8) complained of incidents or of any investigation and these pled facts support the "conclusory" allegation that there was no investigation into the administrative complaints.

Lastly, Judge Nickerson stated petitioner "also adds allegations concerning claims earlier dismissed by the court", Memorandum and Order, dated May 5, 1998, p. 5, Exh. H. As outlined in the above paragraph, these "added allegations" are critical to this Free Speech cause of action and are necessary to support the cause of action and to refute the appellees expected reasons for conducting the disciplinary hearing.

The petitioner was very disturbed by the numerous inaccuracies in Judge Nickerson's decision dated February 5, 1997, Exh. I and this is the first time they have been addressed or reviewed[6]. Petitioner does not mean to be too critical, however, the oversights detailed below show the lack of understanding that has permeated this case. Petitioner understands the difficulties in comprehending some of his piecemeal pleadings, however, the petitioner can not understand or tolerate, nor does it explain the numerous and substantive inaccuracies in Judge Nickerson's decisions. As stated above, Judge Nickerson notified the

[6] Note, petitioner's third appeal was denied sua sponte because the appeal was incorrectly characterized as an interlocutory appeal to amend the complaint when the appeal was actually from a denial of a preliminary injunction, which was the same basis for the two previous appeals.

petitioner that the petitioner added "allegations concerning claims earlier dismissed by the court". However, the facts pled in the petitioner's last complaint, Exh. J are all necessary to state a cause of action, to understand the extreme retaliatory conduct alleged in the cause of action and are the bare minimum necessary to construct "a short and plain statement of the claim". In addition, the pled facts refute a showing that appellees would have charged the petitioner absent his speech. Judge Nickerson's subsequent dismissal of this cause of action after stating he would withhold a decision on the cause of action until a "summary judgment" motion, Memorandum and Order, dated February 5, 1997, p. 11, Exh. I, even though this is a jury question, shows more bias by Judge Nickerson.

Lastly, Judge Nickerson's February 5, 1997, Exh. I decision shows a lack of understanding of the timing of events and of the incredulously long time, of five (5) months, in relation to other events, appellees waited to charge the petitioner. Judge Nickerson states appellees "never investigated any charges against the [petitioner] until April, 1994, after they discovered petitioner had made the offensive remark", (underline added) p. 11. This statement is incorrect for two reasons. First, as pled above there was no investigation into the charges, thus, Judge Nickerson has extrapolated facts to support his statement that they eventually investigated the charges. Second, and more importantly, the GPA misconduct complaint to the LSAC, allegedly the major reason for the disciplinary hearing, was found in October, 1993 and made in November, 1993 by appellee, Ms. Ortiz, therefore, this charge was investigated five (5) months before the petitioner's offensive remark. An important element in any free speech cause of action is the timing to add support for the cause and effect relationships. The timing of events in this case has been misunderstood and incorrectly cited in Judge Nickerson's February 5, 1997 decision, Exh. I.

Memorandum of Law for
First (1st) Free Speech Cause of Action

Petitioner's complaints allege improper reasons in charging, in initiating and for conducting a disciplinary hearing which "violated 'clearly established statutory or constitutional rights which a reasonable person would have known'", Williams v. Smith, 781 F.2d 319, 322 (2nd Cir. 1986). By charging the petitioner with misconduct at a public graduate institution due to the fact he referred to a fellow student's child as a "zebra" child in a private conversation clearly violated the petitioner's First Amendment rights. However, Judge Nickerson found "it was objectively reasonable for [appellee] Ortiz to believe that bringing a disciplinary hearing proceeding against the [petitioner] did not violate his constitutional rights", Memorandum and Order, dated May 5,

1998, p. 9, Exh. K. This cause of action is premised on charging the petitioner with the "zebra" charge, not on "bringing a disciplinary hearing" which is pled in the causes of action described later. Therefore, Judge Nickerson has not understood this cause of action and has mixed it with the other causes of action described later, other causes that were allegedly dismissed in his earlier decisions. At the very least, there are facts pled to show the hearing was held for "dual-reasons", and one reason was improperly motivated or impermissible, thus further discovery is required.

Recognize the setting of this law suit is (1) not employment related, see Connick v. Myers, 461 U.S. 138, 103 S Ct. 1684 (1983), (2) not in a military educational setting and (3) not a high school speech incident involving younger impressionable students, see Bethel School District No. 403 v. Fraser, 478 U.S. 675, 106 S.Ct. 3159 (1986). In the above three (3) areas, the courts have limited constitutionally protected speech with overriding concerns of employment disruptions, military etiquette and high school impressions, respectively. However, no Circuit has addressed speech in a university setting in the non-academic, non-disruptive, non-employment and non-controversial circumstances of this case, as shown by the extensive free speech case law below.

The character of the case at bar presents a question unique to that involved in a public employment case involving a disruptive work environment, a high school indecent speech case or even an university disruptive speech case [see Sigma Chi Fraternity v. George Mason University, 993 F.2d 386 (4d 1993)]. The appellees do not have the right to punish a law student at will as in an employment case. The speech by the petitioner in the case at bar was not indecent or discipline related, thus the speech can not be analogized to a high school or military etiquette incident case, respectively.

Cases Related to the Speech Circumstances in this Appeal

In situations where there could be an impermissible intent and a permissible intent for a appellee's disciplinary conduct the Second Circuit indicated "whether the impermissible reason had a causation effect on the adverse state action in a dual-motivation case is decided by asking the truer-of-fact first to determine whether the impermissible reason was at least part of the appellee's basis for its action", Greenwich Citizens Committee v. Counties of Warren and Washington Industrial Development Agency, 77 F.3d 26, 32 (2d Cir. 1996). The petitioner has pled facts to show at a minimum there were impermissible reasons in charging the petitioner. The Greenwich court went on to say that "in such cases, a finding that the appellee acted because of the protected

speech [impermissible intent] is tantamount to finding that the appellee acted with retaliatory intent", id.

The most analogous circumstances to the case at bar were presented in Greenwhich, supra. case, that cited Harrison v. Springdale Water & Sewer Commission, 780 F.2d 1422, 1428 (8th Cir. 1986) where an petitioner proved a Free Speech claim against the state due to the state's frivolous counterclaims filed. From the state's frivolous counterclaims the state's retaliatory intent was inferred, as can be inferred from the baseless charges initiated against the petitioner in the case at bar. Another similar case involved an inmate that filed a grievance against prison officials that resulted in a "misbehavior report" against him. see Lowrance v. C.O.S. Achtyl, 20 F.3d 529 (2nd Cir. 1994). However, the facts in Lawrence's administrative hearing were diametrically opposite to the facts pled in this case because the inmate admitted to engaging in the conduct that formed the basis of the misbehavior report. Thus, the "misbehavior report" was issued on proper grounds and the free speech and lack of probable cause constitutional violations were dismissed. Note, the petitioner has not pled a lack of probable cause violation due to the insurmountable facts required and the high standards the case law requires to support a cause of action.

Another case very similar to the case at bar involved an individual at a school board meeting who was allegedly silenced by the chairperson due to his speech at the meeting. see Musso v. Hourigan, 836 F.2d 736 (2nd Cir. 1987). The individual was arrested after not following the chairpersons' order to be quiet, however, the charges were later dismissed. One of the chairpersons initially "stated under oath that he ruled Musso out of order because he disagreed with what Musso was saying" and later the same chairperson changed their story and said he "ruled Musso out of order in an attempt to restore order", id., 743. Similar falsifications by an appellee have been pled in this case also, Amended Complaint, August 21, 1996, para. 42, Exh. H.

A case where an employee was fired due to his efforts to establish a union, National labor Relations Board v. Transportation Management Corp., 462 U.S. 393 (1983) is very analogous to the case at bar. The Supreme Court recognized that "at least two of the transgressions [thus, there were more than two transgressions as alleged in this case] that purportedly would have in any event prompted [the employee's] discharge were commonplace and yet no transgression had ever before received any kind of discipline. Moreover, the employer departed from its usual practice in dealing with rule infractions; indeed, not only did the employer not warn [the employee] that his actions would result in being subjected to discharge, it never expressed its disapproval of his conduct", id., 404. The exact same facts were pled and are present in this case.

In academic dismissal cases the court requires that "no rational basis for the decision or that it was motivated by bad faith or ill will unrelated to academic performance", Clements v. County of Nassau, 835 F.2d 1000, 1004 (2d Cir. 1987). The Supreme Court held that in academic decisions "courts may not overturn such decisions 'unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment'", Clements supra, citing Michigan v. Ewing, 474 U.S. 214, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985). This case does not involve academics, however, "a substantial departure from accepted academic norms" were pled in this case.

The Assistant Attorney General cited Williams v. Smith and a slew of cases to attempt to conclude that the falsifications involved in filing false reports in the case at bar does not constitute personal involvement by an appellee. "The filing of a false report does not, of itself, implicate the guard who filed it in constitutional violations which occur at a subsequent disciplinary hearing", Williams v. Smith, 781 F.2d 319, 324 (2nd Cir. 1986). Williams was the most applicable of all the cases cited to the case at bar. However, in the Williams case, supra. the false report was not related to or part of the reason the subsequent free speech violation occurred at the disciplinary hearing, and for this reason, this case and the other cases cited by the Attorney General are not on point. In addition, with regard to the "zebra" charge there was no false report alleged. The Attorney General has mixed up the alleged false reports from the correct reports. The other false reports are directly related to the free speech cause of actions described below and are part of the reason other subsequent free speech violations occurred. The report alleged related to this cause of action, which was not really false, but was pled to show there was "impermissible reason[s] underlying the charge so the court would examine the credibility of the University's stated reasons" for charging the petitioner.

Appellees Conduct is Not and was Not Moot

The fact the disciplinary committee withdrew the "zebra" misconduct charge does not moot or obfuscate the above first (1st) free speech cause of action, as shown by "when the Committee finally reported, it recommended that no disciplinary action be taken against a faculty member for speech outside the classroom and that no disciplinary proceedings be brought against Professor Levin", Levin v. Harleston, 966 F.2d 85, 89 (2nd Cir. 1992). Professor Levan proceeded with a free speech cause of action, as shown by the fact "no disciplinary proceeding or other investigation of Professor Levin is pending, and the Ad Hoc Committee recommended that none be initiated. This does not make the controversy moot. See United State v. W.T. Grant Co., 345 U.S. 629,

633, 73 S.Ct. 894, 897, 97 L.Ed. 1303(1953). To demonstrate mootness, petitioners bear the heavy burden of showing that 'there is no reasonable expectation that the wrong will be repeated'", id., 90. The petitioner and other students expected and expect, respectively, that "the wrong will be repeated", as demonstrated by the article in Exh. R. In addition, appellees should be required to explain why they charged the petitioner with misconduct based on his "zebra" comment. "Petitioner's principal contention on appeal is that any chilling effect caused by the creation of the Ad Hoc Committee did not satisfy the requirements of Laird because the Committee 'was purely advisory, utterly lacking power to take any action' against Levin. We find this argument unpersuasive", Levin v. Harleston, 996 F.2d 85, 89-90. In addition, First Amendment rights "may not be infringed regardless of the procedural 'protection' accompanying the deprivation. 'It is no defense to a claim of infringement of the liberties protected by the First Amendment that the procedure was fair'", Liffiton v. Keuker, 850 F.2d at 73 (2d Cir. 1988).

To further exemplify the oversights in this case by the district court the petitioner recalls a motion for declaratory judgment was made, but was never decided, or even mentioned in a district court decision. The district court never even stated the declaratory judgment "motion was not properly before the court" as was stated with regard to the free speech grade motion, which is described later.

Appellees Conduct Has Chilled Free Speech

By initiating the zebra charge the appellees sought the law school community's reaction to punish or chill the petitioner and others for off campus or private speech. The petitioner's private comment was unrelated to any school activity and with regard to such speech the Second Circuit has stated "we may not permit school administrators to seek approval of the community-at-large by punishing students for expression that took place off school property", Thomas v. Board of Ed., Granville Cent. Sch. Dist., 607 F.2d 1043 at 1051 (2d Cir. 1979), and "although we are resigned to condone an added increment of chilling effect when school officials punish strictly limited categories of speech within the school, we reject the imposition of such sanctions for off-campus expression". In addition, Levin "has been warned by the Committee that his speech (as it may relate to unbecoming conduct) should be the subject of continuing scrutiny by the college", Levin v. Harleston, 770 F.Supp. 895, 924 (S.D.N.Y. 1992).

Secondly, "college officials, including the appellees, formed and supported the creation of the Ad Hoc Committee in order to give official expression to an institutional condemnation of Professor Levin's views", id, 918. Thirdly, "the Committee did not flatly assert that the expression of his views alone, outside of his classroom, did not and does not subject him to a future charge of conduct unbecoming a faculty member, a

dischargable offense, his tenure notwithstanding", id, 924. Also, "in the last analysis, a school official acts as both prosecutor and judge when he moves against student expression" and "indeed, experience teaches that future communication would be inhibited regardless of the intentions of well meaning school officials", Thomas, 706 F.2d at 1051. "When fear of injury that is neither imaginary nor speculative discourages the exercise of valued and revered First Amendment rights, courts must intercede. Babbit v. United Farm Workers National Union, 442 U.S. 289, 301-03, 99 S.Ct. 2301. 2310-11, 60 L.Ed.2d 895(1979)", Federal Election Com.n v. Hall-Tyler, Etc., 678 F.2d 416 (S.D.N.Y. 1982). "Professor Levin has been stigmatized in a setting where....his academic freedom has been infringed by administrative interference with his expression of ideas", Levin, 770 F. Supp. at 925.

Appellees Conduct Substantiates a Free Speech Cause of Action

"Petitioners' argument that the district court could not make this finding, because only Professor Levin's opinion supported it, borders on the frivolous. The district court was free to infer an impermissible intent from all of the facts surrounding the creation of the alternative sections. It did not need an affirmative statement that this intent existed. See Washington v. Davis, 426 U.S. 229, 242, 96 S.Ct. 2040, 2048, 48 L.Ed.2d 597 (1978)", Levin v. Harleston, 996 F.2d 85, 89. As shown above and below, the district court's decisions in this case have exuded a bias not to infer any intent by CUNY Law School's conduct. In addition, "it is settled that governmental action which falls short of a direct prohibition on speech may violate the First Amendment by chilling the free exercise of speech, Laird v. Tallum, 408 U.S. 1, 11, 92 S.Ct. 2318, 2324, 33 L.Ed.2d. 154(1972)", id., 89 and "it is the chilling effect on free speech that violates the First Amendment, and it is plain that an explicit threat can chill as forcibly as an implicit threat. See e.g. Trotman v. Board of Trustees of Lincoln Univ., 635 F.2d 216, 228(3rd Cir. 1980), Cert. denied, 451 U.S. 986, 101 S.Ct. 2320, 68 L.Ed.2d 844(1981)", id. at 89-90. Cases with examples of valid free speech claims are Simard v. Bd. of Ed. of Groton, 473 F.2d 988, 995 (2nd Cir. 1973) stating "his first amendment rights were infringed because he was in fact denied tenure in retaliation for his protected activities on behalf of the GEA, Stolberg v. Members of the Bd. of Trustees, 474 F.2d 485 (2d Cir. 1973) (retaliation for opposition to participation in Vietnam war), Johnson v. Brach, supra (retaliation for civil rights activity); Albaum v. Cary, 283 F.Supp. 3 (E.D.N.Y 1968) (complaint alleged retaliatory dismissal for Teacher Association activity)".

Pleading a Free Speech Cause of Action

In the Second Circuit, "question[s] of motive are not properly resolved on motion because credibility necessarily becomes an issue", Dangler v. Yorktown Central Schools, 771 F.Supp. 625, 631 (E.D.N.Y.

1991), see Wakefiled v. Northern Telecom, 813 F.2d 535 (2nd Cir. 1987). "The requisite nexus between the exercise of their First Amendment rights and subsequent retaliatory conduct .. involves a defendant's motive and intent, which are difficult to plead with specificity in a complaint", Gagliardi v. The Village of Pawling, 18 F.3d 188, 195 (2nd Cir. 1994). However, the petitioner in this case has pled numerous facts, in addition to a "chronology of events from which an inference can be drawn that actions by", id. appellees were motivated by the petitioner's exercise of his First Amendment rights and that their was a causal connection. see Bailey v. Floyd County Board of Education, ___ F.3d ___ (6th Cir. 1997).

Inadequate Notice Procedural Due Process Cause of Action

The facts relevant to this issue on appeal were pled after filing the petitioner's third complaint and after Judge Nickerson's second grant to the petitioner to amend his complaint and were filed in affidavit form. The pled facts allege an experienced attorney prosecuted the case against the petitioner at the disciplinary hearing, but the petitioner was denied the right to counsel for his defense, Amended Complaint, August 21, 1997, para. 62, Exh. H. Second and most important, **the petitioner was not notified until during the hearing of the three (3) witnesses that testified and was not provided their written complaints** (regarding the two incidents that they testified and the petitioner was found guilty) **until during the disciplinary hearing,** Affidavits for Inadequate Notice Preliminary Injunction Motion. The three complaints that were not received until during the disciplinary hearing were from Ms. Lim, Mr. Pla and Ms. Brown and are located in Exh, D. However, the petitioner was notified and provided complaints before the hearing from two (2) other witnesses that testified regarding the two incidents that the petitioner was found guilty. Judge Nickerson's decision dated February 5, 1997, Exh. I overlooked the inadequate notice facts and their importance, thus, this cause of action should be studied carefully. The two facts above are critical to the due process violation cause of action pled based on current federal procedural due process law, as described below.

Judge Nickerson's February 5, 1997 decision, Exh. I states "the court held that 'petitioner was accorded due process in his disciplinary proceedings' and dismissed a claim nearly identical to petitioner's second claim here", p. 4. Petitioner filed facts never presented to the district court that showed the petitioner was not given adequate notice of the substance of the charges to prepare an adequate defense. The inadequate facts are quoted below to highlight the due process violation alleged and the oversight by Judge Nickerson.

As indicated below, twice during the disciplinary hearing the chairperson asked the petitioner if he had received the complaints supporting the charges and/or names of the expected witnesses and the

petitioner responded that the he had not. First, in the morning during the second day of the disciplinary hearing the chairperson asked petitioner's Student Advisor, "Mr. Biggens, since you asked us for the information that you spoke about earlier, specifically a complaint list", The Disciplinary Hearing Transcript, p. 62. A second time later the same day the petitioner's Student Advisor stated:

"MR. BIGGENS: I have a continuing objection about not being allowed to cross-examine because of not have some of the material. We did have not have copies of this memo from the library staff.

MADAM CHAIR: Did you specifically request the internal memo?

MR. BIGGENS: It's pretty inclusive what we asked for. We will make a copy. I have a copy now but I got it like a half hour ago ...

MADAM CHAIR: Mr. Biggens, did you receive a folder that had a copy of all of those documents?

MR. BIGGENS: About a half hour ago, after the break, and I guess if there are materials in this folder I would like a reasonable opportunity to review the materials which we have not had access to before", id., p. 153, l. 4.

There is further evidence to show that the petitioner was not appraised of all the witnesses even by the third day of the disciplinary hearing, such as:

"MR. BIGGENS: We didn't have notice that the last witness was going to testify, so we're --

MADAM CHAIR: But you knew you would be here today?", id., p. 333.

This testimony shows that the petitioner was not aware of the complaints/memos and the names of the complainants/witnesses until the second and third day of the hearing.

The appellees also denied petitioner's Freedom of Information Law (FOIL) request (regarding the evidence involving the charges) that was made before the hearing started, as outlined below. From the Disciplinary Hearing Transcript on the second day of the hearing the petitioner indicates:

"I have not be able to prepare, I have put questions for information to Dean Byrnes and the records officer, Mr. Fields. I have not received information from them whatsoever. ... Mr. Willett, do you have a copy of your request?

MR.. WILLETT: Yes, I do, this letter from Mr. Fields indicating the timetable.

MADAM CHAIRPERSON: Would you please submit a copy of your request to the committee so that we can look at it right

now? ... Mr. Willett, let me ask you this. Have you received any of the documents that you requested?
MR. WILLETT: No", id., p. 15-17.

The Committee Chairperson, Ms Ellijah responded:

"Mr. Willett, the committee has reviewed your letter of May 6, and Dean Ortiz, we have also reviewed the letter from Dave Fields to Mr. Willett dated May the 9th. The Committee is not going to adjourn this matter today. Mr. Willett, however at the close of the testimony we will keep the hearing open", id., p. 17, l. 17.

Petitioner specifically requested the complaints/memos with a FOIL request to enable him to prepare a defense and he was denied access to the information.

In addition, the notice of the charges to the petitioner stated:

"3. Violation of Rule 3 of Article 129A of the Education Law, which states: Unauthorized occupancy of University/college facilities or blocking access to or from such areas is prohibited. Permission from appropriate college authorities must be obtained for removal, relocation and use of University/college equipment and/or supplies.

The first violation of this rule occurred in November of 1993, in the Law School's library. You were observed going in and out of the offices of library staff members. When told by the Evening Circulation Supervisor that you did not have access to library office nor to the computers in the rooms, you proceeded nevertheless to go inside an office and attempted to use the computer.

The second violation occurred on November 29, 1993. It was reported that you were seen using the computer of the Reference Librarian. The Evening Circulation Supervisor admonished you again on the use of computers that are reserved for staff.

On February 8, 1994 you were observed using the phone in a professor's office on the second floor. At that time you stated that permission had been granted to use the phone. Upon investigation it was discovered that permission had not been granted.

4. Violation of Rule 2 of Article 129A of the Education Law, which states:

Individuals are liable for failure to comply with lawful directions issued by representatives of the university/college when they are acting in their official capacities.

On November 29, 1993 after you were given a lawful direction on a prior date to cease using the private computers of members

of the library staff and entering their work spaces, you failed to heed this direction and used the computer equipment of a library staff person.

On February 8, 1994 after you were given a lawful direction on a prior date to not use the telephone of a professor at the Law School, you were observed using the phone", Exhibit A.

The charges do not say who gave the orders to the petitioner or whose or what computers were used by the petitioner or at what time these events occurred[7]. The petitioner was not provided adequate notice of the charges to present a defense and this is another reason no defense was put forth.

Petitioner briefs for the first time ever, that the notice above states the "Evening Circulation Supervisor admonished" the petitioner, however, based on the testimony the alleged incident on November 29, 1993 occurred in the morning. This is just another falsification or inaccuracy in the appellees case against the petitioner.

Memorandum of Law

Inadequate Notice Procedural Due Process Cause of Action

Initially, the Second Circuit needs to recognize their reliance on Goss v. Lopez, 419 U.S. 565, 579, 95 S.Ct. 729, 740 (1975) and predetermination cases is misplaced. The Goss Supreme Court qualified its decision with the fact "we should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures", id., 584, 741. Secondly, the fact the disciplinary hearing in this case was not followed by a hearing with more elaborate procedures dictates that the disciplinary hearing was not a predetermination hearing either. The due process standards required in a case such as this one were summarized by Justice Brennan and Marshall in Cleveland Board of Education v. Loudermaill, 470 U.S. 532, 105 S.Ct. 1487 (1985): "as the Court also correctly notes, other cases 'will often involve factual disputes,' ante, 1494, such as allegedly erroneous records or false accusations. As Justice Marshall has previously noted and stresses again today, ante at 1497, where there exists not just plausible arguments to be made, but also, 'substantial disputes in testimonial evidence,' due process may well require more than a simple opportunity to argue and deny", id., 552, 1499, citing Arnett v. Kenedy, 416 U.S. 134, 214, 94 S.Ct. 1633, 1674

[7] As discussed later in the Insufficient Findings of Fact Procedural Due Process Cause of Action, the decision does not say whose orders were not followed or whose or what computers where used. After reading the substantive due process cause of action section discussed later, it should be clear it is impossible to determine from the testimony whose orders the petitioner did not follow and whose or what computer the petitioner allegedly used based on the facts presented in the disciplinary hearing.

(1974). The case at bar is exactly what the Supreme Court, Circuit Courts and District Courts have alluded to in a number of decisions cited below that require "more than a simple opportunity to argue and deny".

Adequate Notice is Required

The case law below requires adequate notice of the facts before the hearing that substantiate a charge to enable a student to prepare a defense. In a college disciplinary hearing very similar to the one at bar it was iterated that a "student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies", Dixon v. Alabama State Board of Education, 294 F.2d 150, 158 (5th Cir. 1961). This was reaffirmed by the 2nd Circuit in Wasson v. Trowbridge, 382 F.2d 807, 812 (2d Cir. 1967). This requirement was confirmed by the U.S. Supreme Court when it iterated that due process requires a student to be given "an explanation of the evidence the authorities have" and "**the right to a hearing is certainly of little value without prior notice of the charges presented in sufficient detail to enable the party charged to demonstrate any error that might exist**", Cohen v. City of Philadelphia, 736 F.2d 81, 84, (3rd Cir. 1975), cited in Johnson v. Sec. of the Air Force, 776 F.2d 75, 79 (3rd Cir. 1985), quoting Goss v. Lopez, 419 U.S. 565, 579, 95 S.Ct. 729, 740 (1975), see Mulane, 339 U.S. at 314, Memphis Light & Water Div. v. Craft, 436 U.S. 1, 14, 56 l.Ed2d 30, 98 S.Ct. 1554 (1978). The Goss court added "the student first be told what he accused of doing and what the basis of the accusation", id., 582.

Further case research confirms adequate notice before the hearing, such as "written statements" and "the letter also referenced two other forthcoming statements and indicated that they would be forwarded", Fellheimer v. Middlebury College, 869 F.Supp. 238, 240 (D.VT 1994); that "the function of notice is to give the charged party a chance to marshal the facts in his defense and clarify what the charges are, in fact", Wolff v. McDonnell, 418 U.S. 539, 564, 94 S.Ct. 2963, 2978, 41 L.Ed2d 935 (1974), citing In re Gault, 387 U.S. 1, 33-4, n. 54 (1967); "Congress incorporated these notions of due process in the Administrative Procedure Act. Under the Act, 'persons entitled to notice of an agency hearing be timely informed of ... the matters of fact and law asserted' 5. U.S.C. 553(b)", Yellow Freight v. Sec. of Labor, 954 F.2d 353, 357 (6th Cir. 1991) and "the test is one of fairness under the circumstances of each case---whether the employer knew what conduct was in issue and had an opportunity to present his defense", id., 358, citing Soule Glass and Glazing v. NLRB, 652 F.2d 1055, 1074 (1st Cir. 1981); In both Keough v. Tate Cty. Bd. of Educ., 748 F.2d 1077, 1081 (5th Cir. 1984) and Nash v. Auburn University, 812 F.2d 655, 663 (11th Cir. 1987) the students received a "list of accusing witnesses" and the students had the assistance of counsel; the "letter to the petitioners gave adequate notice because it

'listed both the alleged facts upon which the appellees were relying and the reasons those facts were felt to be offensive'", Johnson v. Sec. of the Air Force, 776 F.2d 75, 79 (3rd Cir. 1985); "notice must inform the inmate of the charges against him and of the details of his alleged offense", Clutchette v. Procunier, 497 F.2d 809, 818 (9th Cir. 1974); "the charges were dismissed after it was discovered ... the charges failed to specify what property the [the petitioner] had stolen", Wojtkiewicz v. Gunter, 1992 U.S. App. Lexis 28564 (9th Cir. 1992).

Petitioner asks in this appeal for the court to acknowledge the above notice facts under the circumstances that the petitioner's disciplinary hearing was conducted. Second, petitioner asks that a decision be made whether a student, in these circumstances, has the right to know more of the facts that support a charge and/or witnesses before the disciplinary hearing to enable the student to prepare a defense. Lastly, under the circumstances of this case whether this is fair, not whether this was a due process violation, but whether denying a student access to these facts is fair.

At oral argument, the petitioner will poignantly highlight the above facts and expect enlightened discussion based on the facts and the law on this issue.

Right to Counsel

The most analogous setting in the cases found to this case are those in military separation proceedings. For example, an "individual must receive notice of the charges against him and a fair opportunity to present a defense. With respect to counsel, the Court in Wasson reasoned that counsel is not ordinarily required where the proceeding is noncriminal in nature; where the proceeding is essentially investigative and the government does not proceed with counsel, and where the individual concerned is sufficiently mature and educated to develop the facts adequately" (underline added), Phillips v. U.S., 910 F.Supp 101, 108 (E.D.N.Y 1996), citing Wasson v. Trowbridge, 382 F.2d 907 (2d Cir. 1967) citing Lolesa v. Lehman, 534 F.Supp. at 593-4; see Hagopian v. Knowlton, 470 F.2d 201 (2d Cir. 1972). This circuit has recognized that counsel is necessary when the government proceeds with counsel, as in this case. In addition, the disciplinary hearing in this case was criminal in nature since it alleged theft, fraud and trespassing by the petitioner.

"When regulations prescribe specific steps to be taken to insure due process they must be substantially observed", Friedberg v. Resor, 453 F.2d 935, 938 (2d Cir. 1971), cited in Phillips v. U.S. supra. The APA requires that an agency "act in accordance with the procedures it has imposed upon itself in ensuring due process requirements are met", Phillips v. U.S. supra, citing Lightsey v. King, 567 F.Supp. 645, 649-50 (E.D.N.Y. 1983). In addition to the above violations, the petitioner's: (1) charges were not brought within the 30-day statute of limitations; (2) the

prosecutor was allowed a delay to obtain counsel before being cross-examined; (3) no conciliation conference or notice was provided before formal charges were announced; (4) the prosecutor's assistant allegedly assumed three (3) conflicting roles of conciliator, investigator and witness; and (5) petitioner's witnesses had left after finals and the two (2) week wait before the petitioner was allowed to put forth a defense. The circumstances and abuses in the case at bar far exceed the violations evident in Turof v. Kibbee, 527 F.Supp 880 (E.D.N.Y. 1981).

A fair hearing was not provided, as shown by: (1) the day before the disciplinary hearing the prosecutor's assistant indicated the petitioner could postpone the hearing until after law finals; (2) the hearing was held before, during and after law finals; (3) the prosecutor was allowed to be cross-examined only after repeated unwarranted admonitions with threats of serious repercussions to not overstep cross-examination when there had been no warnings with the previous 12 witnesses; (4) petitioner was never notified of any of the violations that dated back over a year before being charged to review and curtail his behavior; (5) two CUNY Law School administrators indicated they would not testify for the petitioner; and (6) the prosecutor made falsifications about the existence of the charges to the petitioner.

Lastly, the fact the disciplinary hearing in this case alleged criminal conduct such as trespass and fraud with only a preponderance of evidence to establish guilt ironically makes the necessity of counsel all that more important. The necessity of counsel is even more important in this type of disciplinary hearing because the lower evidentiary standards required are misleading to the public and even to a first year law student. The standards in an administrative hearing conflict with the higher due process standards the public has learned to expect in a criminal hearing. The public and even a first year law student usually has only learned of criminal type hearings and has no idea of the lower standards and peculiarities in an administrative hearing.

Second (2nd) Free Speech Cause of Action

The pled facts allege the petitioner asked the appellee and Dean of Students, Victoria Ortiz to assist in him establishing his New York residency, Amended Complaint, August 21, 1996 para. 19, Exh. H. After the appellee, Ms. Ortiz refused to assist the petitioner, the petitioner inquired into her job responsibilities. The appellee, Ms. Ortiz stated to the petitioner and acted as if she did not like petitioner's questions. Within weeks of these two individuals first encounter the appellee, Ms. Ortiz made the infamous baseless GPA complaint to the LSAC against the petitioner. All the documents supporting the baseless GPA charge are in Exhibit C to show how baseless was the charge. The LSAC later found that "by unanimous vote....that misconduct had not occurred" (underline

in original), Exhibit C, however, CUNY Law School had already expelled the petitioner for three (3) years based on the same evidence. The sequence of events, which occurred during October, 1993 of the first semester of the petitioner's law school career, shows a clear cause and effect relationship indicating the baseless complaint against the petitioner was a result of the petitioner's probing questions as to whether the appellee, Ms. Ortiz's was performing her job related duties and a cause of action was properly pled.

The subsequent falsifications by appellee, Ms. Ortiz that were pled and the method she used to obtain the petitioner's educational record before she made the GPA complaint to the LSAC add substantial credence to the allegation that the GPA complaint resulted from the petitioner's comments to appellee, Ms. Ortiz on a matter of public concern. Judge Nickerson stated petitioner's "criticism of Dean Ortiz clearly concerns a matter of 'purely personal interest' – [petitioner's] interest in securing Dean Ortiz's assistance in establishing New York residency", Memorandum and Order, dated February 5, 1997, p.9, Exh. I. The petitioner's initial goal was to gain the assistance of appellee, Ms. Ortiz. However, after appellee, Ms. Ortiz's response to petitioner's request, the petitioner's goals "clearly" changed. No individual in their right mind would insult a dean by inquiring into their job responsibilities to obtain their assistance. Obviously, the petitioner, a frustrated student at this point, attempted to professionally express his concern to the appellee, Ms. Ortiz regarding her lack of interest and assistance. The petitioner even asked appellee, Ms. Ortiz who could assist him to solve his residency dilemma, however, appellee, Ms. Ortiz had no answers. Obviously, the petitioner believed the Dean of Students or Ombudsman of CUNY Law School was the appropriate individual to handle this matter and appropriately inquired into what were appellee and public employee, Ms. Ortiz's job responsibilities, which "clearly" is a matter of public concern.

In any event, the petitioner's reasons, whether they were of "purely personal interest" or for the benefit of society at large and CUNY's Student body, for questioning appellee, Ms. Ortiz regarding her job responsibilities is irrelevant. In addition, the petitioner was not a public employee and therefore, the petitioner's realm of protected speech is not limited to matters of public concern. See Waters v. Churchill, ____ U.S. ____ (1994) and Connick v. Myers, 461 U.S. 138, 142 (1983). Second, the judge has imputed another bias to petitioner statements and invented facts by stating the petitioner's comments were "criticisms".

Third (3rd) Free Speech Cause of Action

The pled facts allege the petitioner requested appellees, Bursar, David Fields and President, Haywood Burns to participate in and follow the Federal TRA program procedures so the petitioner would receive

tuition assistance funds. As expected, the petitioner should have been and was already approved for the TRA program by the Department of Labor before he approached representatives of CUNY Law School. As pled, appellee, Mr. Fields raised numerous baseless objections to disqualify the petitioner from the TRA program to enable CUNY Law School not to participation in the TRA program, Amended Complaint, August 21, 1996 para. 46, Exh. H in retaliation to petitioner's requests. Initially, the petitioner requested CUNY Law School to follow the procedures for the TRA program. The petitioner's requests eventually became demands that culminated in a request to Senator Padavan to coerce CUNY Law School to follow the TRA program. The sequence of events shows a clear cause and effect relationship indicating the appellees ridiculous conduct toward the petitioner and the TRA program was a result of the petitioner's request and demands for CUNY Law School to participate in a program they were being forced to follow and a cause of action was properly pled.

Fourth (4th) Free Speech Cause of Action

As stated, the petitioner requested and eventually demanded appellees, Bursar, David Fields and President, Haywood Burns to participate in and follow the Federal TRA program procedures so the petitioner would receive tuition assistance funds. Appellee, Mr. Burns and the petitioner had discussed the TRA program numerous times and the appellee, Mr. Burns had even signed and approved the TRA contract once previously, Amended Complaint, August 21, 1996 para. 44, Exh. H. Appellee, Mr. Burns asked the petitioner to return again to discuss the TRA contract after subsequent baseless objections were raised by appellee, Mr. Fields and they discussed the TRA contract. Immediately after this discussion, another baseless complaint stating the petitioner did not obey an order to enter the president's office resulted, another complaint the petitioner was found not guilty. In addition, the secretary who allegedly instructed the petitioner not to enter the president's office did not file a written report or testify, even after the petitioner asked the secretary to testify. A third individual testified that she heard the secretary give the order to the petitioner. This is when false reports were filed, as discussed above, and where additional defendants should be named, as discussed in the Conclusion. The sequence of events shows a clear cause and effect relationship indicating the appellees ridiculous complaint directed at the petitioner was a result of the petitioner's request and demands for CUNY Law School to participate in a program they were being forced to follow.

Fifth (5th) Free Speech Cause of Action

After the appellees grew increasingly threatened by the appellees requests, questions, comments and lawsuit, such as petitioner's (1) inquiry into whether appellee, Ms. Ortiz was fulfilling her job responsibilities, (2) demands that a federal tuition assistance program be

followed, (3) calling a fellow student's children "zebra children" and (4) lastly, a lawsuit against CUNY Law School to recoup money collected based on CUNY Law School's incorrect residency determination, the appellees initiated and conducted a baseless disciplinary hearing against the petitioner. The sequence of events shows a clear cause and effect relationship indicating the appellees disciplinary hearing was a result of the petitioner's repeated requests, questions, comments and lawsuit. The alleged facts show a progressively retaliatory reaction to the petitioner's requests, questions, statements and lawsuit directed to the appellees that culminated in a ridiculous disciplinary hearing that lacked fact and a cause of action was properly pled. Every disliked comment and act by the petitioner resulted in a retaliatory response by the appellees, as the subsequent pled facts below further show.

The appellees must meet their burden and make a showing "by the preponderance of the evidence that they would have prosecuted petitioner absent the protected speech", Memorandum and Order, dated February 5, 1997, p. 12, Exh. I. The facts alleged show there was no reason for the disciplinary hearing and the record from the disciplinary hearing shows a substantive due process violation, discussed below, based on the numerous falsifications and contradictions that are apparent in the record itself. Based on the facts in this case, a lack of probable cause to even charge the petitioner due process cause of action should be granted, however, this cause of action has not been pled because the case law does not consent to such a due process cause of action. "To the extent that the absence of factual support for the stated reasons for the University's action tend to prove that some other constitutionally impermissible reason underlies the action, the courts should examine the credibility of the University's stated reasons", Fluker v. Alabama State Bd. of Educ., 441 F.2d 201, 207 (5th Cir. 1971), Megill v. Bd. of Reg. of State of FL, 541 F.2d 1073, 1085 (5th Cir. 1976). Clearly, the above causes of action will raise doubts of the credibility of the reasons stated by the appellees for conducting the disciplinary hearing and the appellees reasons should be questioned and then presented to a jury to determine the appellees intent.

The TRA Billing Procedure Cause of Action

The facts pled allege appellees refused to follow the billing procedures of the Trade Act of 1974 [19 U.S.C. 2311(a)(4) and 2296 (7)(A) and (C)] during the Spring semester, of the 93/94 academic year, Amended Complaint, August 21, 1996 para. 91, Exh. H. Based on the facts pled, the appellees violated TRA law by not following the TRA billing procedures and a proper cause of action was pled.

Judge Nickerson decided in reference to this cause of action that petitioner's claim "that he was denied tuition assistance training benefits in violation of the Trade Act of 1974, was dismissed in Willett v. New

York State Dep't of Labor, No. 95 CV 3487 (E.D.N.Y. Oct 12, 1995)", Memorandum and Order, dated February 5, 1997, p. 4, Exh. I. First, this TRA cause of action has nothing to do with the "denial of tuition assistance". The TRA cause of action in this case involves appellees violation of federal law by refusing to follow the billing procedures for the TRA federal tuition assistance program when petitioner was approved for the tuition assistance program, not with some other agency's subsequent denial of tuition assistance in the TRA program, based on the issue in this case. This TRA cause of action is completely unrelated to the Department of Labor case. Second, the TRA cause of action had already been pled in previous complaints before the Department of Labor case was initiated and there is no relation between to two cases. This was Judge Nickerson's most blatant mistake in his Memorandum and Order, dated February 5, 1997, Exhibit I.

Joining another appellee, such as CUNY , in the Department of Labor case would have been futile. First, the Department of Labor case was not pursued after the preliminary injunction was denied and the Department of Labor case was only for the limited purpose of obtaining tuition funds which were suddenly terminated a month before petitioner was to return to law school. The petitioner had relied on and expected these funds to assist in paying his tuition after his year suspension. The Department of Labor's sudden termination of tuition assistance almost prevented the petitioner from returning to law school after his suspension.

The Supreme Court said regarding 28 U.S.C. 2311(d) that "the Trade Act provision does not foreclose review in federal court of every claim relating to the Act's application by federal and state officials", Int. Union, United Auto. Aerospace, & Agriculture Implement Workers of America v. Brock, 477 U.S. 274, 284, 106 S.Ct. 2523, 2530 (1986). The Supreme Court continued with "there is no indication the Congress intended 2311(d) to deprive federal district courts of subject-matter jurisdiction under 28 U.S.C. 1331(a) (1976 ed.) to hear statutory or constitutional challenges to the federal guidelines themselves", and "claims that a program is being operated in contravention of a federal statute or the Constitution can nonetheless be brought in federal court", id., 285 A proper TRA cause of action was pled.

CUNY Law School Reentry Free Speech Cause of Action

The pled facts indicate the appellees' conduct prevented the petitioner from entering CUNY Law School premises due to fact the petitioner was threatened with arrest even though the petitioner served his suspension and he had registered for his second year of law classes. The petitioner pled that he was prevented from entering CUNY Law School due to the fact the petitioner; (1) questioned an appellee regarding the performance of her job duties; (2) his requests and demands to

appellees to participate in the TRA program; (3) his reference to a fellow student's children as "zebra children"; (4) his successful small claims lawsuit filed against CUNY Law School; (5) his Article 78 Proceeding against the appellees in the Supreme Court, Queens County and (6) his Federal lawsuit against the appellees that is the basis for this appeal, Amended Complaint, August 21, 1996 para. 112, Exhibit H. In addition, the pled facts indicate the now "well known" appellee, Mr. Fields made further falsifications after the petitioner's suspension regarding the petitioner's alleged deceptive attempted entry into CUNY Law School, Exhibit E. The sequence of events pled shows a cause and effect relationship indicating the appellees' conduct of forbidding the petitioner to enter CUNY Law School was a result of the above six (6) public statements made at CUNY Law School. The petitioner properly pled a free speech cause of action that requires the appellees to answer for their actions.

Conclusion

The petitioner has made a good faith and honest attempt to properly plead causes of action that are supported by the facts and case law, as should be recognized by the above explanations and the extensive case law to support each cause of action. Based on the forgoing, the dismissal of all the above causes of action should be reversed.

Lastly, some appellees were not specifically named in this appeal and the last complaint due to the fact the petitioner was intimidated into not adding additional defendants by Judge Nickerson's conflicting and critical decisions. In addition, the petitioner did not want other defendants to be named while the petitioner was still studying at CUNY Law School. Also, the ability of the petitioner to serve new defendants at the time of the previous two complaints, Exh. H and J would have been extremely difficult, as was seen in serving appellee, Ms. Brown. For example, Ms. Brown would not open the door to her residence after demands from by two (2) uniformed police officers to accept service. A complete complaint, as desired by the petitioner, requires these defendants to be added. In addition, for a complaint to be complete and successful the petitioner feels a conspiracy cause of action or two is required to tie all the above actions together. A conspiracy cause of action was pled by the petitioner and supporting case law was presented, however, petitioner was not and is not confident enough or knowledgeable enough, nor was there time available to pursue the conspiracy cause of actions at this time. The facts pled support a conspiracy cause of action. see Dwares v. City of New York, 985 F.2d 94, 99 (2d Cir. 1993). Petitioners asks the Second Circuit for the assistance of counsel to properly pled the conspiracy causes of action and/or more time if the Justices feels inclined to grant this appeal in any part.

Dated: Sept 23, 1999,
Arlington. VA
Stephan Willett, Petitioner pro se

Sworn to before me on

_____ _____
Notary

Steve Willett
Stephan Willett

EXHIBIT A

CUNY SCHOOL of LAW
AT
QUEENS COLLEGE

THE CITY UNIVERSITY OF NEW YORK
65-21 MAIN STREET
FIUSHING. NEW YORK 11367

Dean of Students
(718) 575-4207

April 13,1994

BY CERTIFIED MAIL AND BY REGULAR MAIL

Stephen Willet
206-23 46th Avenue
Bayside, New York 11361

Dear Mr. Willet:

Pursuant to Article 15, Section 15.3 of the Bylaws of the Board of Trustees of the City of New York, notice is hereby given by this letter that charges and possible penalties are being brought against you in a Disciplinary Hearing to be held at 4:00 p.m., on Thursday, May 5, 1994 in Room 340 at the Law School. This letter also details the rights that you may care to exercise at the Disciplinary Hearing on May 5th .

CHARGES: 1. **Violation of Article XV, Section 15.1 of the Bylaws of the Board of Trustees of the City of New York, which states:**

Each student enrolled or in attendance in any college, school or unit under the control of the board and every student organization, association, publication, club or chapter shall obey the laws of the city, state and nation, and the bylaws and resolutions of the board, and the policies, regulations, and orders of the college.

The Law School was informed that after review by a three member panel of the Misconduct in the Admission Process Panel of the Law School Admission Counsel Finance and Legal Affairs Committee, a determination was made that misconduct occurred in your application to the Law School . By memorandum dated February 17, 1994, you were notified by the Law School Admission Council (LSAC) that you violated the Law 9chool *Admission Council Rules Goveming Misconduct in the*

Admission Process. You failed to respond or appear before the panel in regards to this memorandum.

Misconduct and possibly fraud occurred on the admissions application that you submitted to the Law School. On your resume which was submitted as part of your application, you stated that your U.C.L.A.-G.P.A. was 3.0., while your official transcript from U.C.L.A. indicates a 2.595 G.P.A. On your application, you signed a statement indicating that the information provided in your application was true.

2. Violation of Rule 4 of Article 129A of the Education Law, which states:

Theft from or damage to University/college premises or property, or theft. of or damage to property of any person on University/college premises is prohibited.

Violation of this rule occurred at the Law School on or about February 14, 1994. It is reported that you exhibited indecent conduct when a textbook belonging to another student was found in your possession. The owner of the textbook made several announcements in your Lawyering Seminar class asking for the return of his textbook.

Violation of this rule occurred at the Law School in February of 1994. It was reported that on February 2. 1994 a fellow classmate loaned you two textbooks with the agreement that the textbooks he ret-alw4,the next day. On February 3rd you told the student that you left the books on his desk. Later, you informed the student that since he reported the incident to the Security Office you would ever never return the books.

3. Violation of Rule 3 of **Article 129A of the Education Law, which states:**

Unauthorized occupancy or University/college facilities or blocking access to or from such areas is prohibited. Permission from appropriate college authorities must be obtained for removal, relocation and use of University/college equipment and/or supplies.

The first violation of this rule occurred in November of 1993, in the Law School's Library. You were observed going in and out of the offices of library staff members. When told by the Evening Circulation Supervisor that you did not have access to library offices nor to the computers in the rooms, you proceeded nevertheless to go inside an office and attempted to use the computer.

The second violation occurred on November 29, 1993. It was reported that you were seen using the computer of the Reference Librarian. The Evening Circulation Supervisor admonished you again on the use of computers that are reserved for staff.

On January 1, 1994 you entered the Office of the Dean after being told that the Dean was unavailable. Security officers were called to escort you from the office.

On February 8, 1994 you were observed using the phone in a professor's office on the second floor. At that time you stated that permission had been granted to use the phone. Upon investigation it was discovered that permission had not been granted.

4. **Violation of Rule 2 of Article 129A of the Education Law, which states:**

Individuals are liable for failure to comply with lawful directions issued by representatives of the university/college when they are acting in their official capacities.

On November 29, 1993 after you were given a lawful direction on a prior date to cease using the private computers of members of the library staff and entering their work spaces, you failed to heed this direction and used the computer equipment of a library staff person.

On February 8,1994 after you were given a lawful direction on a prior date to not use the telephone of a professor at the Law School, you were observed using the phone.

5. **Violation of Rule 4 of Article 129A of the Education Law, which states:**

Disorderly or indecent conduct on University/college-owned or controlled property is prohibited.

Violation of this rule occurred at the Law School on March 11, 1994 . On this date you exhibited ir-decent conduct by harassing a student about the ethnicity of her children.

PENALTIES: The possible penalties for the violations stated above are:

Admonition. An oral statement to the offender that he has violated university rules.

Warning. Notice to the offender, orally or in writing, that continuation or repetition of the wrongful conduct, within a period of time stated in the warning, may be cause for more severe disciplinary action.

Censure. Written reprimand for violation of specified regulation, including the possibility of more severe disciplinary sanction in the event of conviction for the violation of any university regulation within a period stated in the letter of reprimand.

Discilplinary Probation. Exclusion from participation in privileges or extracurricular university activities as set forth in the notice of disciplinary probation for a specified period of time.

Restitution. Reimbursement for damage to or misappropriation of property. Reimbursement may take the form of appropriate service to repair or otherwise compensate for damages.

Susl2ension. Exclusion from classes and other privileges or activities as set forth in the notice of suspension of a definite period of time.

Exgulsion. Termination of student status for an indefinite period. The conditions of readmission, it any is permitted, shall be stated in the order of expulsion.

Comlplaint to Civil Authoritips.

Ejection.

RIGHTS AT THE HEARING:

At the hearing you will have the following rights: (1) to present your side of the story; (2) to present witnesses and evidence on your behalf; (3) to cross-examine witnesses presenting evidence against you (4) to remain silent without assumption of guilt, and (5) to be represented by legal counsel or an advisor at your expense. Please be advised that anything you say may be used against you at a non-university hearing. A copy of Article 15 of the By-laws of the Board of Trustees of the City of New York, the Rules and Regulations of the Maintenance of Public Order Pursuant to Article 129A of the Education Law and the CUNY School of Law Student Disciplinary Procedures are enclosed.

You may contact Jolli Brown at (718) 575-4204 to make an appointment during the week of April 18th, 1994 in order to review and discuss the charges.

Respectfully yours,

Victoria Ortiz
Dean of Students

EXHIBIT B

CUNY SCHOOL of LAW
QUEENS COLLEGE

THE CITY UNIVERSITY OF NEW YORK
65-21 MAIN SIREET
FLUSH3NG. NEWYORK 11367

In the Matter of Disciplinary Proceedings Against

STEPHAN NVILLETT

DECISION OF THE FACULTY-STUDENT DISCIPLINARY COMMITTEE

By letter dated April 13. 1994, the City University of New York School of Law (hereinafter "Law School") preferred formal disciplinary charges against Stephan Willett. Specifically, five charges were brought against Mr. Willett.

Charge One alleges a violation of Article XV, Section 15.1 of the Bylaws of the Board of Trustees of the City University of New York. which states:

Each student enrolled or in attendance in any college, school or unit under the control of the board and every student organization, association. publication. club or chapter shall obey the laws of the city, state and nation, and the bylaws and resolutions of the board, and the policies, regulations. and orders of the college.

Specifically, the allegation is that Mr. Willett engaged in misconduct and possibly fraud in the admissions process by misrepresenting his Grade Point Average from the University of California, Los Angeles.

Charge Two alleges a violation of Rule 4 of Article 129A of the Education Law, which states:

Theft from or damage to University/college premises or property, or theft of or damage to property of any person on University/college premises is prohibited.

Specifically. the allegation is that Mr. Willett stole two textbooks belonging to a fellow student.

Charge Three alleges a violation of Rule 3 of Article 129A of the Education Law, which states:

Unauthorized occupancy of University/college facilities or blocking access to or from such areas is prohibited. Permission from appropriate college authorities must be obtained for removal, relocation and use of University/college equipment and/or supplies.

Specifically, the allegation is that Mr. Willett without permission 1) entered the offices of library personnel and used library equipment; 2) entered the office of Dean Haywood Burns; and 3) entered the office of Professor Jean Zorn and used the telephone.

Charge Four alleges a violation of Rule 2 of Article 129A of the Education Law, which states:

Individuals are liable for failure to comply with lawful directions issued by representatives of the University/college when they are acting in their official capacities.

Specifically, the allegation is that Mr. Willett failed to obey lawful directives that he not enter 1) the work space or use the computer of library staff and 2) Professor Zom's office or use her telephone.

Charge Five alleges a violation of Rule 4 of Article 129A of Education Law, which states:

Disorderly or indecent conduct on University/college-owned or controlled property is prohibited.

Specifically, the allegation is that Mr. Willett exhibited indecent conduct by harassing a student about the ethnicity of her children.

The Faculty-Student Disciplinary Committee (hereinafter "the Committee") met and carefully considered all of the testimony and evidence presented at the hearing which was conducted on May 5. 13. 25 and 31, 1994, and the motions and arguments of the parties. Mr. Willett was represented by a student advisor, Bruce Biggins. The Law School was represented by Dean Victoria Ortiz. Prior to the commencement of the hearings, the chairperson of the Committee explained to Mr. Willett his right to have a private hearing and the ramifications of the Buckley Act waiver of confidentiality that would attach to a public hearing. Mr. Willett stated that he understood those ramifications and wished to have

a public hearing. As a result. all sessions of the hearing were conducted publicly.

The decision of the Committee with respect to the various motions made by Mr. Willett is as follows:

The Motion to dismiss charges One, Two. Three and Four based on statute of limitations is denied.

The Motion to dismiss charge One for vagueness and on the basis that the Law School failed to follow ifs own rules is denied.

The Motion to consider these proceedings as quasi-criminal in nature is denied. In that vain, the request to raise the standard of proof from "preponderance of the evidence" to "clear and convincing" is denied.

On the first day of hearings, May 5th. the Committee reserved decision on Mr. Willett's Motion to dismiss the proceedings and afford him an opportunity to resolve these matters with a counselor. This Motion is denied. Also, on May 5th the Committee reserved decision on Mr. Willett's Motion to dismiss the charges on the grounds that the investigations of the underlying complaints were not completed within the 30 day time fi-ame provided for in the Bylaws. This Motion is denied.

Based on the testimony and documentary evidence presented during the hearing, the Committee finds that 1) charges One, Three and Four are sustained; 2) charge Two is dismissed; and 3) the Law School's decision not to seek sanctions or argue the evidence with respect to charge Five is deemed a withdrawal of the charge thereby not permitting a decision.

Mr. Willett has been found, by a preponderance of the evidence to have violated Article XV. Section 15.1 of the Bylaws of the Board of Trustees of the City University of New York (charge One), Rule 3 of Article 129A of the Education Law (charge Three) and Rule 2 of Article 129A of the Education Law (charge Four). The Committee has dismissed charge Two because of a procedural defect. The Committee finds with respect to charge Three that all of the allegations concerning incidents in the library and Professor Zorn's office are sustained. While the Committee found the testimony concerning the incident in Dean Bums' office to be credible, that aspect of the charges is not sustained due to a procedural defect. The Committee finds the behavior alleged in charge Five to be reprehensible and wholly unacceptable.

As a result of these findings. the Committee has imposed the following sanctions: charge One expulsion for a period of three years; charge Three - suspension for one year-, charge Four suspension for one year. These sanctions are to be imposed concurrently. This expulsion is to be recorded on Mr. Willett's permanent record. In the event that Mr. Willett should seek readmission to the Law School at the end of the three year expulsion, the following conditions must be met:

1)Mr. Willett must commence the admissions process anew and provide complete. truthful and fully accurate information to the Law School and admissions committee.

2)Mr. Willett must agree in writing to adhere to all the Rules, regulations, policies and Bylaws of the City University of New York and the rules of the CUNY Law School Student Handbook.

Mr. Willett is advised that during the period Of expulsion. he is not permitted to be on the Law School property. If. for any compelling reason, he must come onto the premises, he must first call a Law School official and schedule an appointment with that official for a specific date, time and purpose. Upon his arrival at the Law School for any such appointment. he is required as any visitor, to sign in at the security desk, and to announce the purpose of his visit and the person with whom he has any appointment. At no time during any such visit to the Law School is he to be in any area other than that belonging to the official with whom he has an appointment.

Pursuant to Axticle XV. Section 15.4 of the Bylaws of the Board of Trustees of the City University of New York Mr. Willett has the right to appeal the decision of the Committee within fifteen days after the delivery of the decision appealed from. This requirement may be waived in a particular case for good cause.

The foregoing comprises the full decision of the Committee.

June 27, 1994

EXHIBIT C

Name: Stephan Willett Social Security 527- 78 -7760

7. EMPLOYMENT & EDUCATIONAL HISTORY

We are interested in a complete chronological summary of your academic work and employment since you completed high school. A current resume that includes such a summary would be one way to provide this information

See Resume

To Whom It May Concern:

This is to verify that:

1. In the Fall of 1993, 1 was acting Dean of Students and Director of Admissions for the City *University of New York Iuw School.*

2. Stephan Willitt was admitted to the Law School.

3. Shortly thereafter, Victoria Ortiz was appointed Dean of Students.

4. Following her appointment she demanded to see the admissions file of Mr.Willitt.

5. As per the *requirements of* the Privacy Act, I inquired as to her need to see the file.

6. She would not give me a reason for her request and I informed her that if *she* did not have a valid educational purpose for her request, as required by the Act, I would not let her see the file.

7. She waited until I has out of the office on Law School business and made the same request of my assistant, who contacted me and asked what should be done. I told her to follow Dean Ortiz's order and I would handle it on my return.

9. I informed Dean Haywood Bums of Dean Ortiz's conduct and of my concern for the rights of Mr. Willitt and he said he would handle the situation

The above is true and correct as to facts within my personal knowledge.

Sincerely,

Carlton S. Clark, Esquire

CUNY LAW SCHOOL at QUEENS COLLEGE

CITY UNIVERSITYOF NEW YORK
65-21 Main Street
Flushing, N.Y. 11367

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Office of the Students
Dean Victoria Ortiz
718-575-4207

November 10. 1993

Judith M. Hetrick
Assistant to the Corporate Counsel
Law School Admission Council
Box 40
Newtown. PA 18940-0040

Dear Ms. Hetrick.

. I enclose documents regarding a case of possible misconduct in the admissions process that occurred during the application process for the class of 1996.

The applicant- Stephan F. Willett. Included a resume as part of his application. On that resume, he indicates that he received a BS from UCLA in December 1988, with a GPA of 3.0. On the UCLA transcript his cummulative GPA is listed as 2.595. 1 enclose copies of the two documents in question.

1 would appreciate your reviewing these documents and conducting whatever investigation you consider appropriate.

Please feel free to call me should you require any further *information.*

I thank you in advance for your kind attention to -this matter.

Sincerely,

Victoria Ortiz
Dean of Students

VO/mm

Present Address:STEPHAN WILLETT**Home Address:**
1122 Eastover Raod
Norfolk, VA 23502
(804)461-1863

633 Ranchito Drive
Escondido, CA 92025
(619)743-4215

EMPLOYMENT OBJECTIVE:

I would like to become a full time professional Law student at your university.

CAREER PROGRESSION:

1-90 to Now: Independent Contractor, teaching, computer consulting, product sales at International College of California, Community Colleges, etc.

1-90 to 6-92:McDonnell Douglas Space Systems, Huntington Beach, CA
SPACE STATION. Evolution Team, selling new **Quality Control** processes using TOM tools, marketing of systems evolution strategies, functional flows & fault tolerance analyses, performed computer administration analyses & CAD solid modeling on **VAX/VMS.**
Major Accomplishments: 1. I published an operations document that incorporated input from 10 different disciplines.
2. I was part of ad hoc quality team which created a division wide suggestion program that required top management support to disposition ideas and it interfaced with the company suggestion program.
3. I published articles on team work, TOM tools & support required to develop the suggestion program and one to inform team members of companies average vehicle ridership involvement and requirements.
4. I received an award for development and integration of CAD solid models.
5. I prepared a detailed report explaining the Macintosh operating system and the extensive Local Area Network(LAN) software to enhance one's usage of the
computing facilities.
6. I published an evolution report in which I documented methods to design the
Guidance, Navigation & Control(GN&C) and Communication & Tracking(C&T) systems
so they could accommodate system growth and future technology development.

1-90 to 6-92:**Goldenwest College,** Huntington Beach, CA
Part time Teacher Assistant, Tutor and Assistant to disabled students.

10-90 to 12-90: United States Air Force, Lackland AFB, San Antonio, TX Pilot in Enhanced Flight Screening l5logram.

EDUCATION: BS in Electrical/Mechanical Engineering-UCLA in 12-88 , **GPA 3.0**
Pilot training, SCUBA, Drum lessons, CPR, Radio operator

7-88 to 10-88: McDonnell Douglas Aircraft Company, Long Beach, CA
MD-1 1 Simulation Electronics Group, used VME backplane, digital electronics, CAD software, programed Fortran/VMS, PALs & PROMs.
Major Accomplishment: Developed a program in Fortran that converted variable
names to recognizable text descriptions.

Law School Admission Council
Box 40
Newtown, PA 18940-0040
215.968.1101
FAX 215.968.1169

CONFIDENTLAL

February 14, 1994

Ms. Judith M. Hetrick

Assistant to the Corporate Counsel
Law School Admission Services
P.O. Box 40
Newtown, Pennsylvania 18940

RE: Stephan FL Willett
SS# 527-78-7760

Dear Ms. Hetrick:

This is to report on the determination I have reached after considering the case of the above-referenced law school candidate in accordance with Section 11 (a) of the Law *School Admission Council Rules Governing Misconduct in the Admission Process.* In my letter to him dated December 8, 1993, Mr. Willett was notified that it was alleged that his academic record was misrepresented on his application to law school. Mr. Willett was invited to respond and provide an explanation. . Willett did not respond. Consideration was given to the complete documented case, which is enclosed.

Finding of Fact. Based on the documented case, I determined that the preponderance of the evidence shows that misconduct occurred in that Mr. Willett misrepresented his academic history on his application to law school, which constitutes misconduct under the *Law School Admission Council Rules Governing Misconduct in the Admission Process*

In accordance with the *Law School Admission Council Rules Governing Misconduct in the Admission Process,* the case documents should be sent to each law school to which the candidate applied and subsequently applies and to any other affected person or institution in accordance with the Rules.

Sincerely,

j
John A. FitzRandolp , Panel Chair
LSAC Misconduct in the Admission Process

Enclosure

Law School Admission Council
Box 40
Newtown, PA 18940-0040

CONFIDENTIAL MEMORANDUM

TO:	Donald N. Zillman, Dean University of Maine School of Law
FROM:	Judith M. Hetrick Assistant to the Corporate Counsel
DATE:	July 25, 1994
RE:	Stephan R. Willett SS# 527-78-7760

On February 17, 1994, you were notified that in accordance with Section 1 1(a) of the *LSAC Rules Governing Misconduct in the Admission Process,* the chair of the LSAC Misconduct in the Admission Process Panel of the LSAC Finance and Legal Affairs Committee determined that misconduct occurred regarding the law school application of the above-referenced candidate who had applied to your law school. Mr. Willett's case was sent to the Panel chair for consideration because Mr. Willett had not responded to the letter of charge within the prescribed time frame.

I am writing to inform you, however, that in accordance with the *LSAC Rules Governing Misconduct in the Admission Process,* this case was re-opened and reviewed by a newly constituted three-member panel because Mr. Willett reported that he never received the original case documents. **By unanimous vote, based on the case documents, including Mr. Willett's responses of May 16, 19941994and and May 30, 1994, the three-member panel. reversed the original decision, dated February 14, 1994, and determined that misconduct had not occurred.**
This memorandum should replace my mailing to you of February 17, 1994. Please let me know if you have questions.

cc: Stephan R. Willett

Frances M. Tucker
Registrar

EXHIBIT D

To: Vicky Ortiz.

CUNY Law School
Dean of Students

From: Ricardo Pla'
CUNY Law Library
Evening Circ. Supervisor

Date: 11/30/93

Re: Incident reports involving Stephan F. Willitt

lst Incident:

A few days ago, I saw Stephan F. Willitt, lst year CUNY Law student, stepping in and out the empty offices of the Associate Librarian and Bookkeeper/ Circ. Assistant. I asked him if he was looking for someone? He said he did not, but wanted to know whether one of the staff computers in the library uses the Hypercard program? I told him I did not know. Furthermore. I said to him if the library did have a copy, he would not have access to use it. I told him he should to speak to Systems Coordinator Yong-Soo Ha. Moments later, I caught him inside of the Associate Librarian's office trying to "click-on" to her computer. I told him he did not have permission to do so, and I demanded that he leave her office immediately.

2nd Incident:

Last night, I found Mr. Willitt using the reference desk's Macintosh computer. I asked him did he receive permission to use it? He replied that he did not. He then got up and stepped away from the desk. I stated firmly that only our librarians have access to use the reference desk's computer terminal. I, again, repeated the same speech I gave him last week on gaining access to or obtaining copies of the Hypercard program. He, then, wanted to debate the law library's policy concerning restricted access to its computers. I said to him the issue was not open for discussion. He, then, asked to use one of our phones to call Yong-Soo's office. I handed him the phone. Someone answered and said that he could use one of the terminals in the systems' office. When the phone conversation ended, he went downstairs.

cc: Williams, K.

TO: Greg Koster

RE:Stephan Willett's unauthorized use of the reference computer

FROM: Julie Lim

DATE: December 7, 1993

Before the Thanksgiving Weekend, I saw Mr. Willett going into Bettie Scott's office after Mr. Ricardo Pla told him not to go into the offices. After Mr. Pla talked to him again, Mr. Willett walked away and started to go into my office while I was at the Reference desk. I asked him what he* was doing. Mr. Willett replied that he wanted to use Hypercard and he wanted to see if my computer has the software. I said that I did not give him permission to enter my office or to use my computer and that I did not have Hypercard on my computer and that he could use the terminals down in the Westlaw Lab. Mr. Willett said that I must have that software since my terminal can hold more memory than the Macs downstairs.. After I said Ao again. he then asked about the computer at the Reference desk. I told that he could not use the computer at that desk and that only the library staff members have access to It. Mr. Willett then told me that the staff at the Systems Office allowed him to use Hypercard on their computers. I answered that if they let him use it, then he could ask them again. I reiterated that he could not use the computer at the reference desk.

After the 'Thanksgiving weekend, on the morning of November 29th, I noticed that the area around the reference computer was in disarray and I knew someone must had used the computer over the long weekend. Later that day Mr. Willett came and sat at the reference desk to use the computer. I saw him and said to him that he could not use that computer. He started to give me the same arguments that he gave me the last time and that he had used the computer over the weekend although he was previously told not to use it. When he realized that I was not going to let him use the computer, he then went and asked Mr. Pla whether he could use the computer at the reference desk, which Mr. Pla also said no.

TO: Vicki RE: Stephan Willett

FROM: Greg Koster DATE 12/8/93

Stephan Willett finally came to my office at 3:30 pm today, claiming that he had just received your memo. [This is plausible, since I suspect that many of his classes had been canceled in these last few days of the term.]

I told him that I had received complaints from my staff about his repeated attempts to use staff-only computers, and that you had requested the meeting in order to ascertain that he understood the school policy regarding student use of computers. He said that he thought he and I had already had such a conversation. I replied that I had only received the detailed information after our conversation, and that the details seemed to show that he had continued do try to use staff computers after the rules had been explained to him several times; therefore I wanted verification that he did understand the rules and would abide by them.

He mentioned, as he had in our earlier conversation, his need to use a particular program that is not available on the student Macs. I replied, as I had in our earlier conversation, that such computer services were provided by the Systems Dept. and only by the Systems Dept., and that he was entitled to whatever they could and would provide him with but to nothing else.

He asked which Macs were available for his use. I stated that the rule is very clear: he may use the Macs in the Section Libraries and in the MacLab in the Library basement, and no others. If someone in the Systems Dept. gives him permission to use their Macs, he may use them consistent with that permission, but that is an issue between him and the Systems Dept. The Library does not provide computer service to students.

He said that he understands the above rule and will abide by it, and that he is sorry for the earlier events.

I told him that I would report this conversation to you for further action as you deem appropriate.

Note for Kennedy

From: Zorn, Jean
Date: Tue, Feb 15, 1994 4:06 PM
Subject: Stephen Willet
To:Kennedy

To: Victoria Ortiz
From: Jean Zorn
Date: February 15, 1994

Early in the year, I came back to my office to find Mr. Willet in it. using my telephone. (I admit I'd left the door open and the light on. Nevertheless, it is a private office.) He said, "You don't mind if I use your phone, do you?" I said. "Well. yes I do, but finish that call." I did not see him in my office again. I have seen him often. using Louise Pagliaro's phone when she was not at her desk or talking on the lawyering seminar phone - having pulled the receiver out into the hallway - while lawyering seminar is in session. I did not say anything about this to him.

P

EXHIBIT E

5-Jul-95

Stephan Willett
45-74 Kissena Blvd
Flushing, NY 11355
(718)461-5262

Dave Fields
CUNY Law School
65-21 Main Street
Flushing, NY 11367

Hello Mr. Fields-:

I was very surprised by your derogatory nature and the abrupt change in the law school's indication that I could enter the law school facility since my one year suspension was over when today I was denied entrance to the law school denied entrance to the law school by you. You would not even discuss the matter with me.

Last time I spoke with the Security Director, Alonzo Prothro he allowed me entrance to the law school under my own direction and indicated I could have full access to the law school, just as, a regular student would. I do not
understand the sudden change or its reason. Would you please review you decision and provide a basis for it. First you indicated I had to be a registered student, which I am. Then you indicated I must pay the tuition fees which I said I would do immediately if I had a bill for these charges. The sooner this bill is paid the sooner I can be reimbursed from my tuition assistance program. I am simply trying to use the law school as the many other students are doing this summer and participate as any other student does at the law school.

Secondly, I am very alarmed by your allegation in front of 3 people at the security, desk today that I lied to the Department of Labor in reference to your discussion with them last week. This is your second allegation that I have been untruthful, the first being in regard to events that occurred back in my application in July-93. If you had any questions about the facts I have presented you should have questioned me about them back when they occurred. Waiting over cl year until after I have been suspended for one year while there is a pending civil-'rights retaliation law suit against the law school to bring up such questions is improper and wreaks with the retaliatory nature I have alleged against the law school. You have not even brought up these questions to me. You have only indicated you plan to bring forth facts alleging untruthfulness on my part to other people and organizations that have been trying to assist me in achieving my law degree. The 2 allegations of

untruthfulness you have brought forth so far can be *explained away very easily as far as I am concerned. I doubt you have any desire to hear these explanations at this late date and this is why I have resorted to the courts in these matters. I spoke with John Dady at the Department of Labor after you sent him a letter indicating I had been untruthful to him and he indicated to me that he had no problem with what I had said to him with regard to my year suspension. You also sent Mr Dady a decision of the Student/Faculty Disciplinary Committee decision. It seems to me this was extremely prejudiced when part of this decision was overturned and the rest of the decision is still being reviewed by the courts. You also indicate "the Court dismissed his case as being 'without merit"'. A 2nd discovery conference is assisted in my tuition costs last semester and were planning to do the same this coming semester. I am sure there is no basis for these allegations other than a misunderstanding as was found in the allegation by the Law School that I committed fraud in the application process when the LSAC indicated "by unanimous vote ... there was not misconduct". Also when I asked the lady at the security desk for her name or identification # she would not give it to me. In light of the current circumstances at the law school such activities seem very precarious to me. I hoped they would abate, I am doing all I can to be the ideal student as I have been for the past 17 years. Such improper characterizations of my actions were the basis for 8 incidents that made up the charges in my disciplinary hearing. Only 2 of these incidents have been substantiated, so far. If you could be any assistance in stopping these unfounded characteri72tions your assistance would be appreciated.

Thirdly, was a threat that you would call the police if I entered the law school again necessary. Especially when I have entered the law school previously and have done all I possibly can to abide by your rules while registering for
classes Fall, 1995 and was told I could enter the Law School from now on.
You also indicated you were in charge but I think the intent of the Disciplinary decision should previal here. I have satisfactorly completed my one year suspension and should be treated like the other students at the Law School.
Please review these incidents and get back to me.
Sincerely, s/Stephan Willett

CUNY SCHOOL of IAW AT QUEENS COLLEGE

THE CITY UNIVERSITY OF NEWYORK

65-21 MA[N S-FREET
FLUSIENG, NEWYORK 11367

Dave Fields
Associate Dean

July 19,1995

Mr. Stephan Willett
45-74 Kissena Blvd.
Flushing, N.Y. 11355

Dear Mr. Willett:

Thank you for your letter of July 5 following your attempted visit to the Law School last week. Your letter is unfortunate in that you begin by making false statements with regard to permission to be in the building that you claim our Security Director provided to you when the opposite is the truth. Attached to this letter is a note I received from the Director of Security that states that he did not give you the permission you claim he gave you. It therefore follows that I did not act in any way to change or over ride any permission you claimed he gave you. This incident is yet another example of your failure to be honest and it is unfortunate that you have not seemed to understand how important it is for a person who wishes to be a lawyer to be truthful.

As you know, you were found guilty by the Student Faculty Disciplinary Committee, as modified by the Dean, of violations of the regulations of this institution and are barred from the building under that ruling. You will be allowed in the building when you are a student again. You will be a student again, if you fully pay your tuition and fees when you are billed. You will be billed when the res of our students are billed, which is based upon when the university computer system give us the go ahead. You will be allowed back into the building at that time. The reason for keeping you out of the building at this time is because that was part of the penalty imposed by the Committee that was not overturned by the Dean. Your attempt to make up a story that you had been given permission to enter the building again is just another example of your practice in being less that truthful.

With regards to the Dept. of Labor, the issue of your being untruthful to them was based upon statements made directly to me by officials of the Dept. of Labor. They told me that you advised them that **you had dropped out of the Law School last year due** to your own desire to take time off. This as you know, was both untrue and in violation of the Labor Dept. regulations. Upon being informed of the real reason that made you miss last year, they told me to send them the disciplinary case. They were clear to me that you had failed to notify them of your dismissal as you were required to do under the program guidelines. In addition, you were less then truthful to me when you told me that you had in fact notified them of the disciplinary actions taken by the Law School against you. How the Dept. of Labor treats this information is between you and them since I did sign the certification form that you left for me with the understanding that you would still pay your bill to the Law School in full and work directly with the Labor Dept. for any financial aid that might be due to you.

With regards to your objection to my statement that a court dismissed your
complaints as being "without merit" please see judge Nickerson's ruling on your case from Federal
Court. The fact that you may have filed additional cases or appeals does not change the accuracy of
my statement.

It was my hope that you would have used the time that you were barred from the Law School to reflect upon the behavior that you exhibited while a student here and learn from that experience you had to change your approach. It is unfortunate that you seem to have failed in this regard, so far. It is now my hope that your will rethink your approach during the summer months and that you will come back when classes begin with a better attitude.

Cordially, Dave Fields
Associate Dean

CUNY SCHOOL
QUEENS COLLEGE

THE CITY UNIVERSITY OF NEW YORK
65-21 MAIN STREET
FLUSHING, NEW YOPJ. ! 1367
718;575-4200

To: Dean Fields
From: Alonzo Prothro
Re: Mr. Stephan Willet

July 14,1995

Dave:

In reference to Mr. Willet's letter dated July 5, 1995, there seems to be a misunderstanding on his part. At no time during my conversation with him on July 5, 1995, or on any other occasion, did I state or imply that

Mr. Willet was welcome back to the School as a student in good standing. I had told Mr. Willet that I was authorized to allow him into the building for the sole purpose of conducting business with the School's registrar. I told him that when everything was cleared up with his registration and bill payment, the Associate Dean, or his designate, would inform me that Mr. Willet would be allowed to enter the building as a student in good standing.

I don't know how Mr. Willet misconstrued my conversation with him, but somehow he did-a problem which seems to follow him. In any event, I will await instructions from your office regarding any change in status for Mr. Willet as it pertains to his access to the building. Thank you

EXHIBIT F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEPHAN WILLETT,

94 CV 3873
MEMORANDUM
Plaintiff, AND
ORDER

-against

THE CITY UNIVERSITY OF NEW YORK; THE CITY UNIVERSITY OF NEW YORK LAW SCHOOL AT QUEENS COLLEGE; CHANCELLOR W. ANN REYNOLDS; DEAN HAYWOOD BURNS; DEAN OF STUDENTS VICTORIA ORTIZ; and PROFESSOR JILL SOFFIYAH ELIJAH,

Defendants.

---------- x

RONALD B. MCGUIRE 28 Vesey Street - Suite 2121 New York, New York 10007 for plaintiff.

G. OLIVER KOPPELL Attorney General of the State of New York (Judith T. Kramer, of counsel) 120 Broadway **New York, New** York 10271 for defendants.

NICKERSON, District Judge:

Plaintiff, a first year student at the Cit
University of New York Law School at Queens College (the "Law School"), brought this action pursuant to 42 U.S.C. 1983 alleging that he was wrongfully suspended from the Law School in violation of his rights to free speech and due process as guaranteed by the First and FourteenthAmendments. Plaintiff moves for a preliminary injunction staying the suspension.

The relevant facts are, in substance, as follows.
Plaintiff enrolled in the Law School in the fall of 1993. On April 13, 1994 Dean of Students Victoria Ortiz notified him by certified and regular mail that five charges were being brought against him in a May 5, 1994 disciplinary hearing. He admittedly received the notice on "approximately" April 15, 1994.

The notice set forth the charges, the possible penalties, including suspension, and plaintiff's rights at the hearing. In substance, the charges were that plaintiff (1) committed misconduct and possibly fraud by misstating his undergraduate grade point average on his Law School application (the "fraud charge"); (2) stole books from two classmates (the "theft charge"); (3) wrongfully occupied and used certain Law School facilities and equipment (the "trespass charge"); (4) twice failed to comply with directions of Law School representatives (the "insubordination charge"); and (5) committed "disorderly or indecent conduct" by harassing a student about the ethnicity of her children (the "insult charge").

Plaintiff appeared at the May 5, 1994 hearing of the Faculty-Student Disciplinary Committee, consisting of three faculty and two student members. He requested, among other things, that he be granted an adjournment for purposes of obtaining counsel or an advisor. The Committee adjourned the hearing until May 13, 1994 and told plaintiff that the hearing would proceed whether or not he had obtained counsel or an advisor. Plaintiff objected, saying that he would not have enough time obtain representation.

By letter dated May 9, 1994 plaintiff made another request for an adjournment. On May 10, 1994 attorney Neil Rosenberg called Committee Chair Jill Soffiyah Elijah and requested an adjournment. Two days later Rosenberg sent Elijah a facsimile transmission saying that he would represent plaintiff and that he needed an adjournment was because he was appearing before Judge Robert Patterson in another matter.

Later that afternoon, another attorney, Jonathan Silver, informed Elijah that he represented plaintiff. Silver said that he would appear at the May 13, 1994 hearing to request an adjournment but indicated that he would be ready to proceed if necessary.

Neither Rosenberg nor Silver appeared at the hearing on May 13. At the hearing the Committee denied the request for an adjournment, reminding plaintiff that the rescheduled hearing had been "marked final." Plaintiff then made a further request for an adjournment, saying that Silver had declined to represent him without first receiving certain requested documents, and that he did not know "what went wrong" with Rosenberg.

Committee Chair Elijah said that she had called Judge Patterson's chambers and was informed that Rosenberg was no longer scheduled to appear before the judge on May 13. over plaintiff's objection, the

Committee denied the latest request for an adjournment but decided to hold the hearing open until May 18, 1994 to allow both sides to submit documentary evidence.

The Committee granted plaintiff's request for a recess and he then obtained an advisor, first-year law student Bruce Biggins. The hearing then began. It lasted six hours including recesses before being adjourned to May 25, 1994.

The hearing continued on May 25, 1994 and lasted three and one half hours excluding breaks. At the close of that session Biggins requested and was grantedpermission to call Dean Ortiz, who was acting as prosecutor, as a witness. The hearing was then adjourned until May 31, 1994.

On that day, before the hearing resumed, Biggins informed the Committee that he would not call Ortiz as a witness. When the hearing continued, Ortiz asked that she be allowed to call herself as a witness. Biggins objected on the grounds that the prosecution had rested and that she would more appropriately be called as a rebuttal witness.

The Committee denied Ortiz's request and directed Biggins to present plaintiff's case. At the close of the hearing, the Committee stated that it would call and question Ortiz on its own authority and that Biggins would not be allowed to cross-examine. Biggins objected, was overruled, and thereafter rested the defense case.

The Committee then asked Ortiz a series of questions regarding primarily document identification and the timing of the events leading to the hearing. Biggins did not seek to dispute the existence of the documents or the, timing of the pre-hearing events.

In a "Decision of the Faculty-Student Disciplinary Committee" dated June 27, 1994 the Committee found that the fraud, trespass, and insubordination charges had been sustained. The Committee decided that plaintiff should be expelled for three **years based on the fraud charge and** suspended for one year on each of the trespass and insubordination charges. The committee dismissed the theft charge. Because the Law School did not seek sanctions with respect to the insult charge, the Committee deemed it withdrawn.

On July 5, 1994 plaintiff appealed the Committee's decision to the Dean of the Law School, Haywood Burns. In a decision dated August 17, 1994 Dean Burns sustained the trespass and *insubordination charges* but

dismissed the fraud charge, *finding a* lack of intent. He upheld the one-year concurrent suspensions.

Plaintiff says he plans to appeal this decision to the Board Committee on Student Affairs and Special Programs (the "Board") on October 11, 1994. The Law School's academic year began on August 24, 1994.

II A.

Defendants say that this court should *abstain from* exercising jurisdiction in deference to ongoing state administrative proceedings. See Ohio Civil Rights Commln v. Dayton Christian Schools, Inc., 477 U.S. 619, 627-29, 106 S.Ct. 2718, 2722-23 (1986); Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971).

Because federal courts have an "unflagging obligation" to adjudicate cases brought within their jurisdiction, abstention from the exercise of federal jurisdiction is the narrow exception, not the rule. Moses H. Cone Memorial Hosy. v. Mercury Constr. Corp., 460 U.S. 1, 14, 103 S.Ct. 927, 936 (1983); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 813; 96 S.Ct. 1236, 1244 (1976).

The court will abstain in deference to state proceedings only if (1) there is an ongoing state proceeding; (2) an important state interest is implicated; and (3) the plaintiff has an avenue open for review of constitutional claims in the state proceedings. See Cecos Int'l, Inc. v. Jorling, 895 F.2d 66, 70 (2d Cir. 1990).

The claims before this court are not currently pending before a state administrative appeal body. Moreover, it is not clear that the Board will consider if and when he appeals plaintiff's constitutional claims The court will not abstain.

B.

Defendants say that the court should not hear plaintiff's claims until he has exhausted available administrative appeals. But exhaustion is not required when a plaintiff raises a constitutional question and irreparable injury will occur without preliminary judicial relief. See Guitard v. United States Secretary of Navy, 967 F.2d 737, 741 (2d Cir. 1992).

III The standards for issuing a preliminary injunction in this circuit are clear. A party seeking a preliminary injunction must show (1) irreparable harm should the injunction not be granted, and (2) either (a) a likelihood

of success on the merits, or (b) sufficiently serious questions going to the merits and a balance of hardships tipping decidedly toward the party seeking injunctive relief."

Haitian Ctrs. Council, Inc. v. McNary, 969 F.2d 1326, 1338 (2d Cir. 1992), vacated as moot, ___ U.S._, 113 S. Ct. 3028 (1993) (quoting Resolution Trust Corp. v. Elman, 949 F.2d 624, 626 (2d Cir. 1991)); see also Jackson Dairy. Inc. v. H.P. Hood & Sons, Inc., 596 F.2d 70, 72 (2d Cir. 1979) (per curiam).
Plaintiff has satisfied the first element, irreparable harm. A showing of a possible violation of constitutional rights constitutes irreparable harm justifying a preliminary injunction. Covino v. Patrissi, 967 F.2d 73, 77 (2d Cir. 1992); Mitchell v. Cuomo, 748 F.2d 804, 806 (2d Cir. 1984).

Plaintiff advances two bases for his assertion of likelihood of success on the merits or a serious question going to the merits.

First, plaintiff says that his actions giving rise to the insult charge constituted constitutionally protected speech.. He apparently said to a white classmate married to a black man that her offspring were "zebra children." He claims that in deciding to suspend him because of this comment, defendants violated his right to free speech.

This claim is based on a false premise. The Committee explicitly did not base its decision on plaintiff's alleged speech. The prosecutor withdrew the insult charge. Nothing in the record indicates that the Committee's deliberations on the fraud, theft, trespass and insubordination charges were tainted by its mereawareness of the insult charge. Dean Burns' decision did not even refer to it. Even if plaintiff's speech was constitutionally protected, it plainly was not a substantial or motivating factor in defendants' decision. Mt. Healthy City Sch. Dist. Board of Education v. Doyle, 429 U.S. 274, 287, 97 S.Ct. 568, 576 (1977).

Plaintiff does not raise a serious question going to the merits of this First Amendment claim.

Plaintiff says that there is merit to his claim that defendants violated his Fourteenth Amendment right to due process by allegedly denying him assistance of counsel and the opportunity to cross-examine a witness. Alternatively, he contends that these denials violated the Law School's by-laws, and that this noncompliance gave rise to a constitutional violation.

In order to prevail, plaintiff must show that he has a property interest in his continued status as a law student and that the Committee impermissibly interfered with that interest without due process of law. See Board of Regents of State Colleges v. Roth, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705 (1972). The court assumes for the purposes of this motion that a graduate student attending a publicly supported school has a constitutionally protected property interest in continuing his studies.

In school disciplinary proceedings that may result in a lengthy suspension or expulsion, due process requires only that a defendant be given "a fair hearing at which he is apprised of the charges against him and permitted a defense." Wasson v. Trowbridge, 382 F.2d 807, 812 (2d Cir. 1967). The defendant need not be represented by counsel or have the opportunity to crossexamine witnesses in order that the hearing be fair. Hasson, 382 F.2d at 312; Winnick v. manning, 460 F.2d 545, 549 (2d Cir. 1972).

Moreover, a defendant school's "every deviation" from its own procedures does not constitute a deprivation of due process. Winnick, 460 F.2d at 550. Procedural non-compliance that does not affect the "fundamental fairness" of a hearing does not give rise to a constitutional violation. Winnick, 460 F.2d at 550.

Article 15 of the By-Laws of the CUNY Board of Trustees states in pertinent part that a student charged in a faculty-student disciplinary hearing has the following rights, among others, 1 to cross-examine witnesses presenting evidence against the student; (and] (v) to be represented by legal counsel or an advisor at the student's expense." By-Laws of the CUNY Board of Trustees, Art. 15(e)(2)(iii) & (v).

Defendants gave plaintiff written notice of the charges against him and the opportunity to put on a full defense. Although he was not represented by an attorney at the hearings, he did retain an advisor who acted as his counsel. In fact, a review of the transcript shows that plaintiff's advisor, while only a first-year law student, did an admirable job.

In accordance with the law school's by-laws, defendants allowed plaintiff to cross-examine all of the prosecution's witnesses. They did not permit examination of Dean Ortiz, called by the committee, *which asked* her some questions to identify documents and to establish the time of some pre-hearing events.

Dean Ortizfs statements concerned peripheral matters not critical to the issues in the hearing. The fact that plaintiff was not able to

cross-examine did not undermine the fundamental fairness of the hearing. Indeed, in the appeal made to Dean Burns, made by the same attorney who represents plaintiff in this court, no mention was made of a failure to allow cross-examination.

Plaintifffs motion for a preliminary injunction is denied.

J

So ordered.

Dated: Brooklyn, New York
September 7, 1994

Eugdiene H. Nickerson, U.S.D.J.

EXHIBIT G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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STEPHAN WILLETT, CV 94-3873
Plaintiff, MEMORANDUM
AND
-against- ORDER

THE CITY UNIVERSITY OF NEW YORK;
THE CITY UNIVERSITY OF NEW YORK
LAW SCHOOL AT QUEENS COLLEGE;
CHANCELLOR W. ANN REYNOLDS; DEAN
HAYWOOD BURNS; DEAN OF STUDENTS
VICTORIA ORTIZ; and PROFESSOR
JILL SOFFIYAH ELIJAH,

Defendants.
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STEPHAN WILLETT 435 West 57th Street, Apt. 9H New York, NY 10019 plaintiff pro se.

DENNIS C. VACCO, Attorney General of the
State of New York

(Clement J. Colucci, Assistant Attorney General, of counsel) 120 Broadway New York, NY,10271 for defendants.

NICKERSON, District Judge:

Plaintiff brought this action in 1994-under 42

U.S.C. § 1983. He was then a first year student at the

City University of New York Law School at Queens

College. The complaint alleged that he was wrongfully suspended from the law school in violation of his rights to free speech and due process as guaranteed by the First and Fourteenth Amendments to the Constitution, and sought damages and an injunction reinstating him.

Plaintiff enrolled in the law school in the fall of 1993. On April 13, 1994 the Dean of Students notified him that five charges were being brought against him in a May 5, 1994 disciplinary hearing and described the possible penalties. In substance the charges were that plaintiff (1) committed misconduct and possibly fraud by misstating his undergraduate grade point average on his law school application (the fraud charge); (2) stole books from two classmates (the theft charge); (3) wrongfully occupied and used certain law school facilities and equipment (the trespass charge); (4) twice failed to comply with directions of law school representatives (the insubordination charge); and (5) committed disorderly or indecent conduct by harassing a student about the ethnicity of her children (the insult charge).

After extensive hearings, requiring a transcript of 416 pages, the Faculty-Student Disciplinary Committee decided on June 27, 1994 that plaintiff should be expelled for three years based on the fraud charge and suspended for one year on each of the trespass and insubordination charges. The committee dismissed or deemed withdrawn the other two charges.

On July 5, 1994 plaintiff appealed the committee's decision to the Dean of the law school, who sustained the trespass and insubordination charges but dismissed the fraud charge, finding a lack of intent. He upheld the one year concurrent suspensions.

Plaintiff moved in this court for a preliminary injunction staying the suspension, attaching, among other things, the entire transcript of the hearing.

In a memorandum and order dated September 7, 1994, familiarity with which is assumed, the court held that plaintiff did not raise a serious question going to the merits of his First Amendment or Due Process claims and that he had been given a fair hearing at which he was apprised of the charges and permitted a defense. The court denied the motion for a preliminary injunction. The Court of Appeals for the Second Circuit affirmed.

In 1995 plaintiff, now pro se, brought another action in this court pursuant to 42 U.S.C. S 1983, alleging that the New York State Department of Labor terminated his training benefits under the Trade Act of 1974, as amended, 19 U.S.C. § 2101 et sect. in violation of section 2311(b) of that Act and 20 C.F.R. § 617.18(b)(2). Plaintiff moved for a preliminary injunction staying the termination.

Plaintiff had applied in January 1994 to the State Labor Department for training assistance under the Act to pay for his tuition. He collected training benefits from February through April of 1994. He served his suspension during the 1994-1995 academic year. On May 31, 1995 the Labor Department issued a notice that plaintiff was terminated from training, and on June 30, 1995 denied his request for further training assistance. An Administrative Law Judge of the New York State Unemployment Insurance Appeal Board sustained the department's determination.

This court in a memorandum and order dated October 12, 1995 held that it had no subject matter Jurisdiction over plaintiff's claim and that the Act vested state courts with exclusive jurisdiction over claims challenging a state agency's application of federal guidelines. The court therefore dismissed the complaint.

In October 1994 plaintiff moved to amend his original complaint against the law school to add new defendants and, among other things, six new causes of action. In an excess of caution the court granted the motion in a memorandum and order dated December 20, 1994.

The amended complaint, signed by plaintiff pro se, contains much extraneous and irrelevant matter. it asks the court to dismiss his counsel, who had already been relieved by the court. The amended complaint purports to incorporate by reference everything from plaintiff's previous pleading and names additional parties, including two students, a records officer, and a student assistant.

The new claims are (1) that the defendants improperly brought the disciplinary charges against him and denied his right to obtain funding from a federal grant in retaliation for exercising his right to have access to the courts, all in violation of 42 U.S.C. S 1985(3) and 42 U.S.C. §1986, (2) that he has been discriminated against as a Caucasian, (3) that defendants deprived him of "monies charged for a higher tuition rate in violation of New York Civil Rules and Procedure § 6301,11 (4) that the decision of the disciplinary committee violated New York state law by failing to state the vote of each member, (5) that defendants improperly got a state court small claims judgment vacated, (6) that after his suspension he was excluded from entering the law school and denied the right to use the library in violation of New York State Education Law § 249(a), and (7) that after he initiated a grade appeal he had no response from the academic dean or faculty member in violation of the student handbook.

On March 20, 1995 plaintiff filed, without leave of court, what he styled as a second amended complaint. The first paragraph of this complaint says that plaintiff would like to withdraw three of the causes of action in the amended complaint on the ground that they would be determined in an Article 78 proceeding in the New York state court. This complaint then asserted two new causes of action, one purportedly under the Trade Act of 1973 "or" Trade Adjustment Act and the New York State Labor Act with respect to billing procedures for a tuition program, and the other asserting a violation of 20 U.S.C. § 1232(g)(b)(1)(A) because the Dean of Students had access to his educational records.

Plaintiff also filed a "3rd amended complaint," also without leave of court, alleging "additional facts" purporting to show his rights were violated at the disciplinary hearing.

On January 16, 1996 plaintiff moved for a temporary restraining order or a preliminary injunction requiring the law school to change a grade he received in 1993 from F to P. To the motion papers plaintiff attached still another complaint styled "Grade Summary Complaint."

Defendants have moved to dismiss the complaints.

Plaintiff's pleadings are unacceptable, even for a pro se litigant, under the Federal Rules of Civil Procedure. Rule 8(a) states, in pertinent part, "[a] pleading which sets for a claim for relief ... shall contain ... a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(e) says, so far as relevant, "[e]ach averment of a pleading shall be simple, concise, and direct." Plaintiff's pleadings do not conform with the requirements of Rule 8.

The court will dismiss the complaints but to the extent stated below will allow plaintiff to file and serve a further amended complaint within 30 days of the filing of this memorandum and order. Plaintiff's motion for a preliminary injunction is denied.

So ordered.

Dated: Brooklyn, New York
March. 22, 1996

Eugene H. Nickerson, U.S.D.J.

EXHIBIT H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT COURT OF NEW YORK

CV-94-3873(EHN)
Stephan Willett,

Plaintiff,
AMENDED

V.COMPLAINT

The City University of New York, The City University of New York Law School at Queens College, Chancellor Ann Reynolds, Dean and President Haywood Bums, Dean of Students and Prosecutor Victoria Ortiz, Disciplinary Chairperson Jill Soffiah Ellijah, Personal Counsel to Chancellor Ann Reynolds, Records Officer, Bursar & Assistant Dean Dave Fields, Assistant to Dean of Students Jolli Brown, Professor Susan Markus, Professor David Nadvorney, Student Desiree Hopkins, Student Jay Rosenbaum.

Defendants, sued in their official and personal capacities. x

JUDICIAL PROCEEDINGS UP TO THIS DAY

Federal Proceedings

1. On September 8, 1994 the United States District Court for the Eastern District of New York denied plaintiffs attorney's request for injunctive relief to stay plaintiffs one year disciplinary suspension. The denial occurred immediately before plaintiffs 2nd year of law school began and the suspension went into effect.

2. On May 2, 1995 the United States Court of Appeals for the Second Circuit denied plaintiffs pro se appeal for injunctive relief. Defendant's argument before the 2nd Circuit consisted of only the fact that the facts presented to the 2nd Circuit by the plaintiff were not before the Eastern District Court of New York.

3. On March 22, 1996 the United States District Court for the Eastern District of New York denied with no additional findings of fact plaintiffs pro se 2nd request for injunctive relief to stay plaintiffs one year disciplinary suspension.

4. On June 15, 1996 the United States Court of Appeals for the Second Circuit denied with no opinion or findings of fact plaintiffs pro se 2nd appeal for injunctive relief.

5. On July 24, 1996 the United States Court of Appeals for the Second Circuit denied with no opinion or findings of fact plaintiffs pro se 2nd appeal for injunctive relief motion for reconsideration.

6. The only decision published thus far is the United States District Court for the Eastern District of New York denial of plaintiffs motion for the appointment of counsel.

State Proceedings
Regarding Suspension

6. On April 21, 1995 the Supreme Court of the State of New York, Queens County denied plaintiffs pro se state due process petition to expunge defendant's suspension.

7. On June 18, 1996 the Supreme Court of the State of New York, Second Department heard oral argument on plaintiffs pro se state due process appeal and no decision has been reached.

Regarding Grade Appeal
8. On June 19, 1996 the Supreme Court of the State of New York, Queens County ordered defendant to decide plaintiffs pro se grade appeal that had been pending for over 2 years.

9. On July 16, 1996 the Supreme Court of the State of New York, Queens County denied plaintiffs pro se motion to renew the grade appeal article 78 proceeding.

10. On July 24, 1996 the Supreme Court of the State of New York, 2nd Department signed an Order to Show Cause for plaintiffs pro se injunction of the grade received by plaintiff and no decision has been reached.

PRELIMINARY STATEMENT

11. This action for damages is brought pursuant to 42 U.S.C. §1983 by a law student who is presently in his 3rd year of law studies and was wrongfully suspended from a publicly owned law school, the City University of New York Law School at Queens College (the "Law School"), for one year after completing his first year. Administrators,

acting under color of law, brought charges against plaintiff in a disciplinary hearing which violated numerous state and federal laws guaranteed by the 14th Amendment. Plaintiff was charged in retaliation for exercising his rights of free speech guaranteed by the First Amendment and for suing the Law School.

12. Defendants have violated the Ist Amendment in suspending plaintiff from the Law School for one year in retaliation to (1) plaintiffs request to the Dean of Students and Prosecutor, Victoria Ortiz to assist him with his residency determination (2) plaintiffs request for assistance from U.S. Senator Frank Padavan, President of the Law School, Haywood Burns and Bursar of the Law School, David Fields to require the defendants to follow the Trade Readjustment Act (TRA) of '74 billing procedures, (3) plaintiffs reference to a fellow student's and his own sister's children as "zebra children" and (4) Plaintiffs suit against the Law School to redress his grievances in a court of law.

13. Plaintiff was denied his right to counsel when the Law School Disciplinary Committee Chairperson refused plaintiffs attorney an adjournment. Plaintiffs attorney had an engagement under the aegis of a federal district court. Defendants' denial of plaintiffs right to an attorney during the disciplinary hearing violated the 14th Amendment's Due Process clause.

1. Defendants have defamed plaintiff when they (1) falsely published to U.S. Senator Padavan that the Law School would not accept certain funds after plaintiff had informed the Senator to the contrary (2) falsely published to the Department of Labor that implied plaintiff had been found guilty of all disciplinary charges (3) falsely published that plaintiff did not follow his certification in the TRA program (4) falsely published statements that implied plaintiffs penalty had been lowed to one year for the GPA fraud charge when the penalty had been dropped (5) falsely published that this present case had been dismissed and (6) falsely published that plaintiff had made untruthful statements to the Department of Labor regarding his suspension from the Law School. Defendants have also indicated their intention to publish to the American Bar Association (ABA) plaintiffs alleged false statements regarding his residency in New York.

15. Defendants refused to follow the billing procedures of the TRA public federal tuition program administered by the Department of Labor that plaintiff had qualified for and received tuition moneys. This refusal violated TRA federal law, the intent of Congress and was in retaliation to plaintiff for exercising his rights to this program and his speech.

16. Defendants gained access to plaintiff's educational record when (1) they had not been identified as authorized persons to access plaintiff's educational record and (2) did not have a legitimate educational purpose to gain access to plaintiff's educational record. This access violated the Buckly Act and New York State Public Officers Law.

17. Defendants decided plaintiffs grade appeal after more than 2 years and only decided the grade appeal after respondent was ordered by Judge Alan LeVine of the Supreme Court of New York, Queens County. During this 2 year period plaintiff was not allowed to discuss the grade with the professor. This violated plaintiff's free speech rights for over 2 years to converse with the professor about the grade awarded. Defendants have used the undecided "F" grade on 2 occasions to coerce plaintiff to forfeit his rights. The Committee that decided the plaintiffs grade appeal had a member that is a defendant in this case and there were extreme irregularities in the formation of the Committee that rise to a Due Process violation.

lst Cause - Violation of plaintiffs right to speak freely by disciplinary hearing, lst Amendment.
2nd Cause Due Process violations, 14th Amendment.
3rd Cause Defamation of plaintiff.
4th Cause Violation of Trade Act of '74, 19 U.S.C. §2311(a)(4), 2296(7)(A)& (C).
5th Cause Illegal access to plaintiffs educational record, 20 U.S.C. §1232g(b)(1)(A), New York State Public Officers Law §96(l)(b).
6th Cause - Grade appeal free speech, lst Amendment.
7th Cause - Discrimination against white people

JURISDICTION

18. Jurisdiction is conferred on this court by 28 U.S.C. §1343(a), which provides for original jurisdiction of all suits brought pursuant to 42 U.S.C. §1983, by 28 U.S.C. §1331 which confers original jurisdiction to the federal district courts over all cases brought pursuant to the Constitution and laws of the United States and by 28 U.S.C §1367, which confers supplemental jurisdiction to the federal district courts over all other claims that are related to the original jurisdiction claims that form the same controversy.

THE PARTIES

19. Plaintiff, STEPHAN WILLETT, resides in the County of Queens in the City and State of New York.

20. Defendant, CITY UNIVERSITY OF NEW YORK("CUNY") is a public university operated under Articles 125 and 126 of the New York State Education Law §§6301, et. seq. (McKinndy 1988)

21. Defendant, CITY UNIVERSITY OF NEW YORK LAW SCHOOL AT QUEENS COLLEGE(the "Law School") is one of the constituent schools of CUNY which is located in the county of Queens in the City and State of New York.

22. Defendant, CHANCELLOR ANN REYNOLDS, has at all times relevant to this complaint served as Chancellor of CUNY with her office in the County, City and State of New York. She is sued in her official capacity as chief administrator of CUNY.

23. Defendant, DEAN and PRESIDENT HAYWOOD BURNS, had at all times relevant to this complaint served as Dean of the Law School with his office in the County of Queens in the City and State of New York. He is sued in his official capacity as chief administrator of the Law School. Mr. Burns at this time is deceased.

24. Defendant, DEAN OF STUDENTS VICTORIA ORTIZ, has at all times relevant to this complaint served as Dean of Students of the Law School and has acted as prosecutor in the disciplinary proceedings against plaintiff. Her office is in the County of Queens in the City and State of New York. She is sued in her official and personal capacities.

25. Defendant, DISCIPLINARY CHAIRPERSON and PROFESSOR JILL SOFFIAH ELLIJAH, has at all times relevant to this complaint been a member of the faculty of the Law School and served as Chairperson of the Faculty-Student Disciplinary Committee(the Disciplinary committee). Her office is in the County of Queens in the City and state of New York. She is sued in her official and personal capacities.

26. Defendant, DISCIPLINARY COMMITTEE MEMBER and PROFESSOR DAVID NADVORNEY has at all times relevant to this Complaint been a member of the faulty of the Law School and served as a member of the Disciplinary Committee. His office is in the County of Queens in the City and State of New York. He is sued in his official and personal capacity.

27. Defendant, DISCIPLINARY MEMBER and PROFESSOR SUSAN MARKUS, has at all times relevant to this Complaint been a member of the faulty of the Law School and served as a member of the Disciplinary Committee. Her office is in the County of Queens in the City and State of New York. She is sued in her official and personal capacity.

28. Defendant, DISCIPLINARY COMMITTEE MEMBER and STUDENT DESIREE HOPKINS, has at all times relevant to this Complaint been a member of the Disciplinary Committee. Her office is in the County of Queens in the City and State of New York. She is sued in his official and personal capacity.

29. Defendant, DISCIPLINARY COMMITTEE MEMBER and STUDENT JAY ROSENBAUM, has at all times relevant to this Complaint been a member of the Disciplinary Committee. His office is in the County of Queens in the City and State of New York. He is sued in his official and personal capacity.

30. Defendant, RECORDS OFFICER and BURSAR DAVE FIELDS, has at all times relevant to this Complaint been an administrative member of the Law School. His office is in the County of Queens in the City and State of New York. He is sued in his official and personal capacity.

31. Defendant, ASSISTANT DEAN OF STUDENTS JOLLI BROWN, has at all times relevant to this Complaint been an administrative member of the law school. Her office is in the County of Queens in the City and State of New York. She is sued in his official and personal capacity.

1ST CAUSE OF ACTION - Freedom of speech Facts

1st Incident of Retaliation

32. In about Mar-93 the Law School received plaintiffs application to law school which does not request an applicant to indicate their GPA, Exhibit A is plaintiffs law school application to which was attached plaintiff's resume with a GPA of 3.0 reported on it.

33. In about Apr-93 the Law School received the plaintiffs Law School Admissions Services' (LSAC) GPA report which indicated the plaintiffs cumulative GPA was 2.99, Exhibit B is plaintiffs LSAC GPA report.

34. In Oct-94 plaintiff requested the Dean of Students and Prosecutor, Ms. Ortiz to assist plaintiff in gaining assistance to determine his New York state residency at the Law School. This discussion was the first contact plaintiff had with Ms. Ortiz. Ms. Ortiz denied her assistance to plaintiff. Ms. Ortiz took offense at plaintiffs objections regarding her refusal to assist plaintiff with his residency. Ms. Ortiz indicated to plaintiff that she took plaintiffs objections "personally".

35. Later in Oct-94 shortly after this conversation with plaintiff the Prosecutor, Ms. Ortiz demanded plaintiffs educational record from the Dean of Admissions, Carlton Clark. Mr. Clark denied Ms. Ortiz access to plaintiffs educational record because she would not give Mr. Clark a valid reason for requiring the plaintiffs record, Exhibit C is Mr. Clark's affidavit documenting this event.

36. Prosecutor, Ms. Ortiz then waited until Mr. Clark was out of his office and made a second request for plaintiffs educational record to Mr. Clark's assistant who gave plaintiffs educational record to Ms. Ortiz. After this event Mr. Clark reported to President, Haywood Bums the method utilized by Ms. Ortiz to receive plaintiffs educational record, Exhibit C is Mr. Clark's affidavit also documenting this.

37. On about Nov. 11, 1994 almost 3 months after law school had begun and within weeks of plaintiff's first contact with the Prosecutor and Dean of Students, Ms. Ortiz wrote a complaint to the LSAC requesting them to investigate misconduct regarding plaintiffs 3.0 GPA reported on his resume that was attached to the application. Ms. Ortiz's complaint consisted of only plaintiffs resume and plaintiffs UCLA transcript, Exhibit D is Ms. Ortiz's letter with attachments. Plaintiff's law school application and other supporting documentation was not enclosed. Ms. Ortiz's complaint was not filed by the Dean of Admissions as would be expected. This complaint was clearly made in retaliation to plaintiffs request to Ms. Ortiz.

38. Ms. Ortiz, the Prosecutor of the disciplinary hearing, initiated the first complaint against plaintiff in Nov-93. Plaintiff had no knowledge of this complaint filed by Ms. Ortiz. This was because in Feb-94 Ms. Ortiz personally had informed plaintiff that there was "no" investigation into plaintiffs GPA. Ms. Ortiz clearly lied to the plaintiff as further evidenced by the letter, Exhibit E received by Ms. Ortiz on about Feb. 14, 94. This exhibit clearly indicates that the plaintiff had not responded to the LSAC's investigation regarding the plaintiff's reported GPA.

39. Based on the GPA complaint the Law School Disciplinary Committee found plaintiff guilty of fraud. As a result of this guilt the Law School decided to punish plaintiff with a 3 year expulsion from law school for the way his GPA was reported on his resume.

40. In July, 1994 the LSAC found "by unanimous vote ... misconduct had not occurred", Exhibit F, due to the way plaintiff reported his GPA in his law school application. In August, 1994 the President, Mr. Bums found a case of carelessness or sloppiness may have been made out" for the way plaintiff reported his GPA on his law school application. Mr. Bums dropped. the expulsion penalty in its entirety. There was no basis for the complaint against the plaintiff as evidenced by the facts and the attached exhibits should highlight its retaliatory nature. This initial complaint was later used as the "main" impedes to the disciplinary hearing in retaliation for plaintiffs speech to a fellow student, to plaintiffs request in writing to U.S. Senator Frank Padavan and plaintiffs redress of grievances in a court of law.

41. Prosecutor, Ms. Ortiz offered a stipulation agreement in the middle of the disciplinary hearing on May 13, 94 to droa the charges against plaintiff and even change plaintiff's "F" grade to a "P" if plaintiff agreed not to return to the Law School to continue his studies. The complaint against plaintiff was not filed for disciplinary purposes, it was in retaliation to plaintiffs request for assistance to Ms. Ortiz.

42. Plaintiff would like to highlight another falsification by Ms.Ortiz's emanating back to an affidavit submitted by her over 2 years ago at the last preliminary injunction hearing on August 22, 1994. In thisaffidavit the prosecutor affirms "during the course of considering the issue of [defendant's] residency claim of New York residency, I reviewed [defendant's] law school application and discovered that on his application" she found the GPA charge, Exhibit V is Ms. Ortiz's affirmation. Do yourecognize whose affirmation this completely contradicts? Obviously someone is lying. The Dean of Admissions, Carlton Clark affirms that when the prosecutor requested the plaintiffs educational record that she "would not give me a reason for her request and I informed her that if she did not have a valid educational reason for her request, as required by the Act, I
would not let her see the file". In addition, the plaintiff respectfully swears the prosecutor told him that she would not review the plaintiffs residency claim because this was not her responsibility.

2nd Incident of Retaliation

43. Plaintiff was qualified by the Department of Labor for tuition assistance through the Trade Act of '74 (TRA). These benefits required a signed TRA contract with the Law School to provide funds for plaintiffs tuition. Bursar, Dave Fields refused to sign plaintiff's TRA contract during the first week of classes for Spring semester, 1994. In contrast, on about Jan. 27, 1994 President and Dean, Haywood Burns, signed the TRA contract, Exhibit H.

44. Although Mr. Burns signed the TRA contract Bursar, Dave Fields, refused to follow the billing procedure to provide plaintiff with the preapproved funds for tuition. Plaintiff requested U.S. Senator Frank Padavan's assistance, Exhibit 1, to require the Law School to follow the billing procedures for the Trade Act of '74.

45. In Feb-94 Mr. Fields told the plaintiff that he felt the TRA program was not applicable for the plaintiff. In addition, Mr. Fields also raised numerous other objections, mentioned below, to the Department of Labor regarding plaintiff's qualification for the TRA program, after the plaintiff had already been qualified for the TRA program by the Department of Labor.

46. Objections included Mr. Fields questions to the Department of Labor concerning the certification of the plaintiff. Mr. Fields questioned the length of plaintiffs study program and plaintiffs state of residency, both of which could have disqualified plaintiff for TRA benefits. Plaintiffs approval for the TRA program was depended on maintaining New State residency and a program of limited study length, as Mr. Fields was fully aware. During the TRA certification Mr. Fields indicated in a letter to the Department of Labor that plaintiff allegedly told him that he planned to move to California. However, plaintiff at that time had been trying to prove to Mr. Fields for 1.5 years that New York had been his permanent residence and that he had no intention to leave New York. The untruthful and outrageous residency declaration by Mr. Fields had adverse effects on plaintiff 's receipt of benefits from the TRA program. The TRA contract had to be completely changed to reflect Mr. Fields new position as due to his suit for redress of grievances against the Law School in Small Claims court.

Plaintiffs Speech Prompted the Disciplinary Hearing

54. There was no investigation into any of the charges. Plaintiff was never notified or was aware of any investigation before the charges were brought against him. The prosecutor, Ms. Ortiz and the Security Director, Mr. Prothro requested each individual that contacted the plaintiff to write

down what occurred. Each of these individuals' reports were later used as complaints against the plaintiff and the prosecutor demanded each individual testify. For example, one person who was requested to submit a complaint by Alonzo Prothro, the Security Director refused to testify to his alleged complaint because there was no factual basis for a charge.

55. Plaintiff was not advised of any alleged violations of any rules before disciplinary action was taken. There was no conciliation conference provided for any of the 8 complaints. These facts clearly show that there was no intent by the Law School to hold a disciplinary hearing until plaintiffs "zebra" comment was recognized and the lawsuit against the Law School was initiated.

56. **Only the "zebra" charge was brought within 30 days after filing** of the complaint against the plaintiff. The other 7 complaints were not acted upon within the required 30 days after their filing. The "zebra" charge was later abandoned by the Law School after plaintiffs temporary restraining order (TRO) hearing and after Judge Traiger's admonition that the zebra child charge implicated First Amendment issues.

57. These above facts further show that there was no intention by the Law School to initiate the disciplinary hearing until after plaintiff had filed a civil action against the Law School and referred to a students children as "zebra children". The disciplinary hearing was held in clear violation of numerous predetermined Law School procedures and practices. Both of these incidents occurred the 2nd week of March, 1994 about a month before disciplinary charges were initiated against the plaintiff. The retaliatory GPA complaint was resurrected at this time to serve alleged disciplinary purposes. The actions of the defendants in bringing the disciplinary charges were in retaliation for plaintiff exercising his Free Speech rights and his lst Amendment right to petition the courts for redress of grievances.

58. The only affidavit submitted by defendants to justify the disciplinary hearing conducted by defendant and prosecutor, Ms. Ortiz was submitted by her over 2 years ago at the plaintiffs 1st preliminary injunction hearing on August 22, 1994. In this affidavit the prosecutor affirms "during the course of considering the issue of [plaintiffs] residency claim of New York residency, I reviewed [plaintiffs] law school application and discovered that on his application" she found the GPA charge, Exhibit V is Ms. Ortiz's affirmation. Do you recognize whose affirmation this completely contradicts? Obviously someone is lying. **The Dean of Admissions, Carlton Clark affirms that when the prosecutor asked for** the plaintiffs educational record she "would not give me a reason for

her request and I informed her that if she did not have a valid educational reason for her request, as required by the Act, I would not let her see the file", Exhibit C. Mr. Clark also adds "she waited until I was out of the office on Law School business and made the same request of my assistant". In addition, the plaintiff has repeatedly respectfully sworn the prosecutor told him that she would not review the plaintiffs residency claim because she indicated this was not her responsibility. Defendant, Mr. Fields waited 2 years after the plaintiffs residency claim to initiate his residency complaint, which was within months of the end of the plaintiffs one year suspension, outlined further later. Ms. Ortiz's actions in conducting a disciplinary hearing with the precarious investigation and resulting precarious complaint followed plaintiffs comments she took "personally". The affirmation by defendant, Ms. Ortiz is contradicted by 2 different individuals. The affirmation resulted from the plaintiffs first request for a preliminary injunction.

Law

59. By virtue of the facts presented the Defendants have acted under color of law as public officials to wrongfully discipline Plaintiff in violation of the 1st, 14th Amendments and 42 U.S.C. §1983.

2ND CAUSE OF ACTION - Due Process Disciplinary Hearing Facts

60. Defendants conducted a disciplinary hearing against Plaintiff which began on May 5, 94. On May 4, 94 the day before the hearing the Assistant to the Dean of Students, Jolli Brown told the plaintiff he could postpone the hearing until after finals or he could make the request for a postponement at the hearing the next day which the plaintiff made. The hearing was postponed 8 days until May 13, 94, making it even harder for plaintiff to obtain an attorney since study time for law finals began on May 13, 94.

61. Plaintiff retained two attorneys to represent him and both contacted the Disciplinary Hearing Chairperson, Jill Soffiah Ellijah who would not postpone the hearing for them to represent the plaintiff, Exhibit L is the 2 attorneys' affirmations. Plaintiffs attorneys were not allowed a postponement of the disciplinary hearing when the first attorney had a conflict with the hearing schedule and the second attorney was unable to be prepared by the next day.

62. While plaintiff was prevented the assistance of his retained attorneys during the disciplinary hearing the defendants proceeded with an experienced attorney, Ms. Ortiz the Prosecutor

63. Plaintiff was not allowed to cross-examine the Prosecutor, Ms. Ortiz about facts she presented in the disciplinary hearing regarding the GPA fraud charge. Plaintiff was also not allowed to cross-examine the Prosecutor, Ms. Ortiz about facts regarding (1) investigations into the complaints, (2) complaint notifications to the plaintiff and (3) conciliation conferences that preceded the disciplinary hearing. However, the disciplinary committee members were allowed to question Ms. Ortiz.

64. Toward the end of the prosecutor's case the Disciplinary Committee Chairperson, Jill Soffiah Ellijah stopped and delayed the disciplinary hearing for Prosecutor, Ms. Ortiz to obtain counsel before being questioned by the disciplinary committee regarding facts leading up to the disciplinary hearing. Therefore, by this point it was very evident plaintiff was not going to receive a fair hearing.

65. No conciliation conference was provided to Plaintiff before initiating the disciplinary hearing in violation of the Law School's disciplinary procedures.

66. Plaintiff was not notified of his violation of any rules or of any inappropriate behavior in violation of the Law School's disciplinary procedures before disciplinary action was taken.

67. Plaintiff was not notified of any investigation into any of the charges or the incidents surrounding the charges against him before disciplinary action was taken. This violated the Law School's disciplinary procedures

68. Not only did Assistant Dean of Students, Jolli Brown not perform the conciliation conference or any investigation into the complaints but she also held 3 irreconcilable roles. Ms. Brown allegedly performed (1) the conciliation conference to resolve the charges, (2) the investigations into the charges and (3) assumed the role of a witness against the plaintiff.

69. Seven out of the 8 complaints were not acted upon within 30 days of their filing, thus again violating the Law School's procedures.

70. The disciplinary committee members, Chairperson Jill Soffiah Ellijah, Professor Susan Markus, Professor David Nadvorney, Student Desiree Hopkins, and Student Jay Rosenbaum did not record their votes by member in the disciplinary hearing.

71. The 4 day disciplinary hearing was held immediately before, during and after plaintiffs law school finals from May 5, 1994 to May 31, 1994 on 4 different days.

72. The Prosecutor, Ms. Ortiz offered a stipulation agreement in the middle of the disciplinary hearing to load the charges against plaintiff and even change plaintiff's F" grade to a "P" if plaintiff agreed not return to the Law School to continue his studies.

73. The Prosecutor, Ms. Ortiz was given, by the Disciplinary Chairperson, Jill Soffiah Ellijah 3 weeks to file her closing arguments and access to the hearing transcript. However, the plaintiff was denied a copy of the transcript for his closing arguments after numerous requests to Ms. Ellijah.

74. Plaintiff's legal assistant in the disciplinary hearing, who offered his assistance after the hearing had begun on the 2nd day, had to change his flight in order to attend the last day of the hearing. After the Prosecutor, Ms. Ortiz rested her case there were none of plaintiff's student witnesses present to testify. The Assistant to the Dean of Students, Jolli Brown and the Disciplinary Chairperson, Ms. Ellijah had assured plaintiff that any student or faculty witnesses would be found to testify as required by the Law School's procedures. None of plaintiffs witnesses could be located that day, especially since law school finals were completed. In addition, plaintiff had no idea when his witnesses would be required to testify. Some witnesses who had waited for hours on different days, during law finals, were very frustrated and had left. The prosecution's case had continued for 4 days, before, during and after law finals and the plaintiff was not told when her case would rest. Plaintiff was precluded from continuing with his legal advisor or from presenting a defense.

Law

75. By virtue of the facts presented above defendants have acted under color of law as public officials to wrongfully discipline Plaintiff in violation of the 14th Amendment and 42 U.S.C. §1983.

Final Grade Administrative Appeal Facts

76. On June 19, 1996 the Supreme Court of New York, Queens County ordered the defendant Law School to decide the plaintiffs grade appeal that had been pending for over 2 years.

77. The Academic Standing Committee(hereafter "Committee") that was formed to decide the plaintiffs grade appeal had a member on the Committee who is a defendant, Mr. Fields in the present lawsuit..

78. On the day of the Committee meeting, June 27, 1996 to decide the grade appeal the Academic Dean indicated her secretary had scheduled the hearing. However, 8 days before the hearing the secretary indicated to the plaintiff the date of the hearing, but she indicated (1) she did not know at what time the hearing was to be held and (2) she did not know how the meeting was scheduled. The secretary also indicated to the plaintiff that he should direct any questions about which Committee members were notified and how members were notified to defendant, Mr. Fields.

Law

79. By virtue of the facts presented above defendants have acted under color of law as public officials to wrongfully conduct a grade appeal hearing for plaintiff in violation of the 14th Amendment and 42 U.S.C. § 1983.

3RD CAUSE OF ACTION - Defamation
Facts

80. Plaintiffs educational transcript from the Law School indicates "disciplinary suspension 06/27/94". This transcript has been published and sent to numerous universities and people, such as Anastasia Kitsantas.

81. Dave Fields, Associate Dean falsely published to U.S. Senator Frank Padavan in a letter dated Feb. 10, 94, Exhibit N that plaintiffs statements "regarding his claim that the Law School would not accept certain funds to pay his tuition [that his] statements are not true" and "quite the contrary is true". John Dady, the Department of labor representative wrote to Mr. Fields on Feb. 3, 94 that "at present per confirmation number 2514-15512, $15,512 has been set aside to pay the tuition of Mr. Stephan Willett SS# 527-78-7760 at CUNY School of Law". Mr. Dady then writes "the law school may bill for whatever is due them" for tuition, Exhibit M is Mr. Dady's letter.

82. Mr. Fields in a letter in Feb-94 falsely published to John Dady of the Department of Labor that Plaintiff had indicated to Mr. Fields that he intended to move back to California. It should be noted that plaintiffs

TRA contract approval in Feb-94 depended on the fact that the plaintiff maintain his New York residency.

83. Mr. Fields in a June 26, 95 letter, Exhibit 0, falsely published and summarized to John Dady of the Department of Labor that all charges by the Law School against the plaintiff "were presented to the Law School Faculty/Student Disciplinary Committee and Mr. Willett was found guilty". This statement falsely implies that plaintiff had been found guilty of all charges. Mr. Fields attached to this letter the decision of the disciplinary committee but did not attach the later changes in the decision.

84. Mr. Fields in the June 26, 1995 letter, Exhibit 0, falsely published to John Dady of the Department of Labor that plaintiff "did not follow his certification during his prior participation in the program" which was the TRA program.

85. Mr. Fields in the June 26, 1995 letter, Exhibit 0, falsely published to John Dady of the Department of Labor that "the Dean lowered the penalty to one year" for the charges plaintiff was found guilty when actually the GPA fraud charge was found to be baseless and the penalty had been dropped entirely.

86. Mr. Fields in the June 26, 1995 letter, Exhibit 0, falsely published to John Dady of the Department of Labor that plaintiff "appealed to the Federal District Court and the Court dismissed his case".

87. Mr. Fields in the June 26, 1995 letter, Exhibit 0, falsely published to John Dady of the Department of Labor that plaintiff "is prone to be untruthful ... [as] underlined when you told me that he had informed your office that he was out of Law School this year because he decided to take a year off".

88. The words written by Mr. Fields were false and defamatory, were known to the defendant to be false and defamatory, and were spoken willfully and maliciously with the intent to damage the plaintiffs good name, reputation and credit as a law student, pro se attorney and recipient of TRA benefits.

Law

89. By virtue of the facts presented in Plaintiffs complaints Defendants have acted under color of law as public officials to wrongfully discipline Plaintiff in violation of the defamation laws and 42 U.S.C. §1983.

4TH CAUSE OF ACTION - Federal TRA Tuition Program Facts

90. Personnel Counsel to Chancellor Ann Reynolds, Mr. Fields refused to follow the billing procedures as explained by John Dady of the Department of Labor under a Trade Act of '74 contract which was awarded to plaintiff, Exhibit M is Mr. Dady's letter explaining the tuition program. After Mr. Fields refused to sign the TRA contract President, Haywood Bums signed plaintiffs TRA contract on about Jan. 27, 94, Exhibit H is Mr. Bums signed TRA contract.

9 1. On Feb 4, 1994 Mr. Fields, stipulated to sign the TRA contract if the Department of Labor's billing procedure outlined by Department of Labor Representative, John Dady, was modified to the extent the Law School did not bill the Department of Labor for tuition moneys awarded to plaintiff, Exhibit J is Mr. Fields signed TRA contract. The Law School a public agency refused to follow the procedures for a tuition program enacted by Congress.

92. Mr. Fields refused plaintiffs request in Jun-95 to follow the billing procedures to provide tuition under plaintiffs TRA contract for plaintiffs upcoming 95/96 school year studies, Exhibit P is plaintiffs request to Mr. Fields to follow the TRA billing procedures.

93. Plaintiff requested the assistance of Chancellor, Ann Reynolds to require the Law School to follow the TRA billing procedures but Dr. Reynolds never responded to plaintiff or his requests.

94. The Law School regularly participates in numerous other federal and state funding programs and follows these programs' procedures to assist numerous other students in gaining moneys for their tuition.

Law

95. By virtue of the facts presented above defendants have acted under color of law as public officials to not follow the TRA billing procedures 19 U.S.C. §2311(a)(4), 2296(7)(A) & (C), the TRA contract or other applicable statute to discipline plaintiff in violation of the lst , 14th Amendments, and 42 U.S.C. §1983.

5TH CAUSE OF ACTION - Illegal Access to Educational Record
Facts

96. Ms. Ortiz, Dean of Students gained access to plaintiffs educational record in about Nov-93. Ms. Ortiz had not been identified as a school official who had (1) legitimate educational interests to allow her access to plaintiffs educational record or (2) a legitimate reason to access plaintiffs educational record. Ms. Ortiz gained access to plaintiffs educational record using illegal tactics. Specifically, Ms. Ortiz had been denied access to plaintiffs records previously by the Dean of Admissions, Carlton Clark. However, she gained access to plaintiff's record by requesting access to it through Mr. Clark's Assistant, see Exhibit C is Mr. Clark's account of this.

Law

97. By virtue of the facts presented above defendants have acted under color of law as public officials to wrongfully gain access to plaintiffs educational record in violation of 20 U.S.C. §1232g(b)(1)(A) and New York State Public Officers Law §96(l)(b) to discipline Plaintiff in violation of the lst, 14th Amendments and 42 U.S.C. §1983.

6TH CAUSE OF ACTION - Free Speech about Grades Facts

98. On about April 27, 1994 the plaintiff made a grade appeal of the "F" grade plaintiff received Fall semester, 1993 in Criminal Law, RIC 1 class.

99. Before making the grade appeal in Apr-94 the Professor, Sid Harring, of the RIC 1 class indicated to the plaintiff that he could not speak to him about the "F" grade. On April 11, 1994 plaintiff notified the Dean of Academics that the professor "indicated he could not speak to me[plaintiff] about the exam" (underline added), Exhibit R is plaintiffs letter to the Academic Dean. Two years later in March, 1996 the professor informed the plaintiff that he was not allowed to speak to the plaintiff because the Law School's rules forbid the professor from discussing the grade with the plaintiff, Exhibit Q is professor, Mr. Harring's letter documenting this.

100. It has -been over 2 years since the plaintiff received the "F" grade and the plaintiff has not been able to discuss the grade with the professor during the last 2 years. This grade appeal has been used to coerce plaintiff, as noted below, to not return to the Law School on two different occasions. This coercion was only possible since the grade appeal was untimely decided.

101. The first occasion of coercion occurred during plaintiff's disciplinary hearing the Dean of Students and the Prosecutor, Ms. Ortiz offered a stipulation agreement that the disciplinary charges would be dropped and plaintiff's "F" grade would be changed to a "P" if plaintiff did not return to CUNY Law School.

102. The second occasion of coercion occurred in Feb-95 when the Assistant Attorney General, Clement Colucci offered the same stipulation agreement in plaintiff's Article 78 Proceeding in Queens County Supreme Court. This was after Judge Goldstein asked the parties to look into alternatives to settle plaintiff's case to which Mr. Colucci indicated that he had been checking into the stipulation agreement.

103. Defendants have failed to follow predetermined grade appeal procedures in retaliation to plaintiff's residency, article 78 proceeding and civil rights cases against defendants and in the process have violated plaintiff's right to speak to a professor.

Law

104. By virtue of the facts presented the defendants have acted under color of law as public officials to wrongfully inhibit Plaintiffs speech in violation of the lst, 14th Amendments and 42 U.S.C. §1983.

7TH CAUSE OF ACTION - Discrimination against white people

105. The members of the Law School's disciplinary committee conspired with the Prosecutor, Ms. Ortiz to find plaintiff guilty of the charges for exercising his 1st Amendment rights of Freedom of Speech. 106. That upon information and belief that the unofficial policy of the Law School is only to prosecute white students for disciplinary infractions, while other groups are not prosecuted.

107. That the Law School has brought disciplinary charges against the following white students Reynolds Russell, Victoria Sipensco and John Shen and against alumnus Jackson Leeds.

108. That 6 out of the 8 complaints were filed by black students and black administrators.

Law

109. By virtue of the facts presented the defendants have acted under color of law as public officials to wrongfully discriminate against

Plaintiff in violation of the lst, 14th Amendments and 42 U.S.C. §1985(3), 42 U.S.C. §2000d.

Additional Retaliation Toward Plaintiff after his Suspension

110. Months within the end of plaintiffs one year suspension another complaint, Exhibit S, was made by defendant and Bursar, Mr. Fields referring to plaintiff's residency claim 2 years earlier. Mr. Fields indicated "in a review of our files we have found the attached handwritten letter from you to the Law School that was written less than two months before the first day of classes" and "it is now clear that you made these false statements to the Law School and University knowing they were false". Mr. Fields in this complaint expressed his intent to notify the Committee on Character and Fitness of the New York State Bar of the plaintiffs alleged falsification. The extreme delay of 2 years in determining this complaint clearly shows the school's retaliatory nature, especially so near the end of plaintiffs suspension with the fact that Mr. Fields should have reviewed this letter 2 years earlier when he determined plaintiffs residency. Plaintiff even referred to this letter in his residency appeal. However, plaintiff was unable to find the letter in his educational record to include it with his residency appeal. Plaintiff does not understand how Mr. Fields obtained this letter when the plaintiff was unable to find it.

111. Mr. Fields also states in his letter, Exhibit S that "you may also try to dismiss what you told me last January about your intention to move back to California. Please be advised that other staff at the Law School heard you say this and all your attempts to claim that I am making this up will go nowhere". Allegedly the plaintiff made this statement during his residency appeals to Mr. Fields. As noted below, it would not surprise plaintiff if another affidavit is presented shortly with more falsifications like this one. Plaintiff made no such statement to Mr. Fields. Such a statement by plaintiff would have been completely contrary to his statements regarding his residency and would have precluded him from obtaining TRA tuition funding in January, 1994. This statement by Mr. Fields is another blatant falsification.

112. Another retaliatory event occurred after plaintiffs suspension and within weeks of his return to begin his law studies anew. After plaintiff had registered for classes, entered the Law School unimpeded and was personally given approval by the Security Director to enter the Law School the Bursar, Mr. Fields terminated his right to renter the law school again. Plaintiff inquired to Mr. Fields with a letter, Exhibit T, after plaintiff was publicly told by Mr. Fields that plaintiff would be

arrested if he returned to the Law School. With Mr. Fields termination letter was attached a falsification by the Security Director indicating he had never given the plaintiff approval to reenter the law school again after his suspension, Exhibit T is the letter and its attachment. This is just another glaring falsification in retaliation to plaintiffs speech at a public American law school and due to his lawsuits against the Law School.

113. Plaintiff would like to direct the court to an article, Exhibit U, he wrote regarding the falsifications occurring at this American public law school and their effects on professional legal responsibilities and ethics. The article provides a fact based summary of the falsifications that have occurred. Plaintiff highlights the numerous falsifications by this law school's administrators to stop the irreparable harm that is resulting to the law profession.

114. Lastly, the plaintiff would like to direct the court to an affidavit of fact, Exhibit W, submitted by the plaintiff that details all the facts surrounding the two remaining outrageous charges against which plaintiff was unable to present a defense. The affidavit was submitted to the 2nd Department after oral argument on the state due process violations due to the court's questions and the fact that usually an appeal is based solely on the administrative record. Note at the end of the affidavit the facts of the prosecutor's affirmation which was not briefed until this time due to their recent discovery.

RELIEF

115. The falsifications emanating from a public American law school should shock the conscious of this court. Some falsifications are substantiated by contradictory facts, other falsifications are evident in individuals' supporting affidavits and other falsifications have been attested to by the plaintiff himself. Plaintiff has tied these lies directly to his actions and speech through the numerous facts adduced since the denial of **his preliminary injunction almost** 2 years ago. These additional facts that were not included by plaintiffs attorney 2 years ago due to time shortages and differing approaches to the suit show a likelihood of success on the merits.

116. Plaintiff seeks compensatory damages of $1,000,000 against each defendant in their individual capacity. Plaintiff seeks punitive damages of $1,000,000 against each defendant in their individual capacity and declaratory relief that his CUNY Law School transcript be expunged of the disciplinary action taken against him.

August 21, 1996
Stephan Willett, Plaintiff pro se
45-74 Kissena Blvd.
Flushing, NY 11355

AFFIDAVIT OF SERVICE

Stephan Willett, on August 21, 96 caused copies of the forgoing to be served on the following party.

Attorney General of New York
120 Broadway, 24th Floor
NY, NY 10271

Exhibits

A. Plaintiffs application to the Law School from Mar-93.

B. Plaintiffs LSAC GPA report from Apr-93.

C Dean of Admissions, Carlton Clark's statement recording events of early Nov-93 regarding the illegal retrieval of plaintiffs educational record by the Dean of Students and Prosecutor, Victoria Ortiz

D. Dean of Students and Prosecutor, Victoria Ortiz's complaint to the LSAC of plaintiffs GPA misconduct, dated Nov. 10, 93.

E LSAC's notification to Prosecutor, Ms. Ortiz that plaintiff had not responded to their investigation into plaintiffs GPA, dated Feb 14,94.

F. LSAC's finding "by unanimous vote misconduct had not occurred" regarding plaintiffs reported GPA on his resume, dated July 25, 94.

G Plaintiffs 2 witness lists for the disciplinary hearing defense.

R President, Haywood Burns signed TRA contract, dated Jan. 27, 94.

I. Plaintiffs letter to U.S. Senator Frank Padavan requesting assistance in forcing the Law School to follow the TRA billing procedures, dated Jan 27, 94.

J. Records Officer and Bursar, Dave Fields signed TRA contract, dated Feb 4, 94.

K Plaintiffs small claims judgment for defendants' incorrect residency determination, dated April 18, 94.

L. Plaintiffs two attorneys retained for disciplinary hearing affirmations' recording events of early May-94.

M. John Dady's, Department of Labor representative letter to Mr. Fields, Bursar explaining tuition funds availability and billing procedure, dated Jan. 27, 1994.

N. Mr. Fields letter to U.S. Senator Frank Padavan with falsifications that the Law School would allegedly accept TRA funds, dated Feb. 10, 1994.

0. Mr. Fields letter to the Department of Labor with falsifications of plaintiffs not abiding by TRA rules, lowered expulsion penalty, plaintiffs indication that he took the year off and refusal to follow the TRA tuition program, dated June 26, 95.

P. Plaintiffs letter to Mr. Fields requesting Mr. Fields to follow the TRA billing procedures, June 15, 95.

Q Professor, Sid Harring's affidavit indicating there has been no request to evaluate plaintiffs grade appeal for 2 years and that the Law School's policy is not to allow professor's to discuss grades.

R Plaintiffs letter to the Academic Dean indicating the professor could not speak to the plaintiff about the grade, dated April 11,1994.

S Bursar, Mr. Fields complaint regarding plaintiffs residency falsifications 2 years earlier, dated March 14, 1995.

T Plaintiffs letter and Bursar, Mr. Field's letter in response that alleged an illegal attempt to visit the Law School by plaintiff after his suspension, dated July 19, 1995 with the Security Director's falsification.

U Plaintiffs professional responsibilities and legal ethics article highlighting falsifications emanating from a public American law school from June 7, 1996.

V Defendant and prosecutor, Ms. Ortiz's affirmation to support her investigation into her GPA complaint and her alleged reasons.

EXHIBIT I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------- x

STEPHAN WILLETT,

94CV 3873
MEMORANDUM
Plaintiff,AND
ORDER

-against

THE CITY UNIVERSITY OF NEW YORK, THE CITY UNIVERSITY OF NEW YORK LAW SCHOOL AT QUEENS COLLEGE, CHANCELLOR ANN REYNOLDS, DEAN OF STUDENTS AND PROSE CUT OR VICTORIA ORTIZ, DISCIPLINARY CHAIRPERSON JILL SOFFIA ELLIJAH, PERSONAL COUNSEL TO CHANCELLOR ANN. REYNOLDS, RECORDS OFFICER AND BURSAR DAVE FIELDS, ASSISTANT TO DEAN OF STUDENTS JOLLI BROWN, PROFESSOR SUSAN MARKUS, PROFESSOR DAVID NADVORNEY, STUDENT DESIREE HOPKINS, STUDENT JAY ROSENBAUM,

Defendants.

STEPHAN WILLETT 45-74 Kissena Boulevard Flushing, New York 11355 plaintiff pro se.

DENNIS C. VACCO Attorney General of the State of New York (Annemarie Prudenti, of counsel) 120 Broadway New York, New York 10271 for defendants.

NICKERSON, District Judge:

Plaintiff, acting pro se, brought this action in August, 1994 under 42 U.S.C. § 1983, alleging that he was wrongfully suspended from the City University of New York Law School at Queens College (the "law school") in violation the First and Fourteenth Amendments. Plaintiff filed several "amended complaints," some without leave of court, in which he added new claims and new parties. Plaintiff now seeks to file another amended complaint.

The facts, underlying plaintiff's claims are laid out in this court's previous opinions, familiarity with which is assumed.

By memorandum and order dated September 7, 1994, this court denied plaintiff's motion for a preliminary injunction enjoining his suspension. Willett v. City Univ. of New York, No. 94 CV 3873 (E.D.N.Y. Sept. 7, 1994), affld, No. 94 CV 7961 (2d Cir. May 1, 1995) ("first order"). By memorandum and order dated March 22, 1996, this court (1) denied plaintiff's renewed motion for a preliminary injunction and a temporary restraining order, (2) dismissed plaintiff's claim that he was denied due process in his disciplinary proceedings for the reasons stated in the first order; (3) dismissed plaintiff's First Amendment and defamation claims without prejudice pursuant to Rule 8(a) of the Federal Rules of Civil Procedure; and (4) dismissed all plaintiff's remaining claims because they either lacked merit or should have been pursued in the state courts. The court granted plaintiff leave to amend his complaint to state a claim under the First Amendment and common law defamation. Willett v. City Univ. of New York, No. 94 CV 3873 (E.D.N.Y. May 22, 1996), appeal dismissed, No. 96 CV 7530 (2d Cir. Jun. 25, 1996) ("second order").

Plaintiff's most recent amended complaint, comprising 34 pages and 116 numbered paragraphs, charges that defendants (1) abridged his freedom of speech by retaliating against him for attempting to enforce his rights for making a derogatory comment about the ethnicity of the children of a fellow student; (2) denied him due process of law in his May, 1994 disciplinary proceedings and in his June, 1996 appeal from a final grade of "FII (the "grade appeal"); (3) defamed him by mailing his law school transcript to various universities and persons and by making false statements in letters to John Dady of the Department of Labor; (4) denied him a tuition grant in violation of the billing procedures of the Trade Act of 1974, 19 U.S.C. H 2311(a)(4), 2296(7)(A) and (C); (5) illegally gave the Dean of Students access to his educational record; (6) abridged his freedom of speech by forbidding his former professor to discuss the 'IF,, grade that was the subject of plaintiff's grade appeal; (7) denied him equal protection of the laws through an unofficial policy of prosecuting only Caucasian students for disciplinary infractions; and (8) delayed reconsideration of his residency claim in retaliation for his lawsuits against the law school.

The court's second order granted plaintiff leave to amend his complaint only with respect to his First Amendment and defamation claims. Accordingly, the court will not consider plaintiff's second, fourth, fifth, seventh, and eighth claims.

Moreover, these claims have already been adjudicated and dismissed. In the second order, the court held that "plaintiff was accorded due process in his disciplinary proceedings" and dismissed a claim nearly identical to plaintiff's second claim here.

Plaintiff's fourth claim, that he was denied tuition assistance training benefits in violation of the Trade Act of 1974, was dismissed in Willett v. New York State Dep't of Labor, No. 95 CV 3487 (E.D.N.Y. Oct. 12, 1995). Plaintiff cannot avoid the operation of res judicata by adding additional parties or citing additional provisions of the Trade Act. See, e.g., Allen v. McCurry, 449 U.S. 90, 94, 101 S. Ct. 411, 414 (1980) (doctrine of res judicata bars relitigation of claims that "were or could have been raised" in action where "final judgment on the merits" was reached).

Plaintiff's fifth, seventh, and eighth claims were present in his last "amended complaint" and were dismissed in the second order. The Second Circuit dismissed plaintiff's appeal of those rulings.

Under his second claim, plaintiff adds an allegation that he was denied due process in his recent grade appeal (1) because defendant David Fields was a member of the Academic Standing Committee that decided the appeal, and (2) because the secretary to the Academic Dean informed plaintiff that the hearing was scheduled on June 27, 1996, but she did not know at what time it would be held. Plaintiff's grade appeal is not properly before this court. Nevertheless, the court reminds plaintiff that procedural defects that do not affect the "fundamental fairness" of a school disciplinary hearing do not give rise to a constitutional violation. Winnick v. Manning, 460 F.2d 545, 550 (2d Cir. 1972).

Plaintiff does not allege that he was unable to present his appeal to the Academic Standing Committee. Nor does he allege that Mr. Fields improperly influenced the votes of other members of the Committee. The complaint does not indicate whether plaintiff in fact attended the grade appeal hearing or whether the law school accords students a right to do so. The court finds that the allegations in the complaint regarding the fairness of plaintiff's grade appeal fail to state a claim for relief under the due process clause.

In sum, the court denies plaintiff's motion to amend and reopen his second, fourth, fifth, seventh and eighth claims, all of which have already been dismissed.

Pursuant to the second order, the court will reopen this case and grant plaintiff leave to amend his complaint only if his First Amendment and common law defamation claims comply with Rule 8 of the Federal Rules of Civil Procedure and the court's other legal rulings. Moreover, the court will deny leave to amend if the proposed amendments are clearly frivolous or legally insufficient on their face. See Fed. R.. Civ. P. 15(a); Acito v. Imcera Group, Inc., 47 F.3d 47, 55 (2d Cir. 1995) ("One good reason to deny leave to amend is when such leave would be futile."); 6 Charles A. Wright et al., Federal Practice and Procedure § 1487 (2d ed. 1990).

A. Retaliation claims

Plaintiff complains of three incidents of alleged retaliation for his exercise of First Amendment rights.

The court first considers the second incident, and then the first and third.

Plaintiff alleges that the second disciplinary complaint against him was launched in retaliation for his demand that law school administrators follow the billing procedures of the Trade Act of 1974, 19 U.S.C. § 2101 et secr., and grant him tuition benefits. The complaint contains no allegations connecting plaintiff's application for tuition benefits to his subsequent disciplinary charge. According to the complaint, plaintiff criticized David Fields, the law school Bursar, for attempting to disqualify him from the tuition benefit program; but, it was Alonzo Prothro, the Security Director, who filed the second disciplinary complaint after discovering that plaintiff entered the office of Dean Haywood Burns without authorization. Plaintiff alleges no facts to support a conspiracy between Fields and Prothro to retaliate against Lin.

Naked allegations of conspiracy to violate plaintiff's civil rights, without more, are insufficient to state a claim for relief under 42 U.S.C. § 1983. Cf. Dwares v. City of New York, 985 F.2d 94, 99 (2d Cir. 1993) (complaint must contain more than "conclusory allegations" of the existence of a conspiracy); Ostrer v. Aronwald, 567 F.2d 551, 553 (II(Clomplaints containing only 'conclusory, vague,' or 'general allegations, of a conspiracy to deprive a person of civil rights will be dismissed."). Accordingly, the court will not consider plaintiff's "second incident of retaliation."

As a "first incident of retaliation," the complaint alleges that Dean Victoria Ortiz, without good cause, initiated a disciplinary charge against plaintiff for falsifying his grade point average on his law school

application because she "took offense" to plaintiff's objections when she refused to assist him to establish New York residency.

Plaintiff's retaliation claims can proceed under the First Amendment only if plaintiff can establish that (1) the conduct at issue was protected speech, and (2) the speech was a substantial and motivating factor in defendants, adverse actions. Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 287, 97 S. Ct. 568, 576 (1977); Ezekwo v. NYC Health & Hosps. Corp., 940 F.2d 775, 780-81 (2d Cir. 1991). If those conditions are met, the court will balance the interests of plaintiff "in commenting on matters of public concern" with those of the state, as administrator of an educational institution, "in promoting the efficiency of the public services it performs." Connick v. Myers, 461 U.S. 138, 142, 103 S. Ct. 1684, 1687 (1983) (quoting Pickering v.9 Bd. of Educ., 391 U.S. 563, 568, 88 S. Ct. 1731, 1734 (1967)).

The first inquiry, whether defendant's speech was protected, is one of law for the court. Connick, 461 U.S. at i48 n.7, 103 S. Ct. at 1691 n.7; Ezekwo, 940 F.2d at 781. Looking at the "content, form, and context" of plaintiff's statement, the court considers whether the speech at issue can be "fairly characterized as constituting speech on a matter of public concern." Connick, 461 U.S. at 148, 146, 103 S. Ct. at 1690. Matters of "public concern" include issues of "political, social, or other concern to the community." Id. at 146. Although the First Amendment protects private communications, Givhan v. Western Line Consolidated Sch. Dist., 439 U.S. 410, 99 S. Ct. 693 (1979), it does not address "matters only of personal interest." Connick, 461 U.S. at 147.

Plaintiff's criticism of Dean Ortiz clearly concerns a matter of "purely personal interest" -- plaintiff's interest in securing Dean Ortiz's assistance in establishing New York residency. The First Amendment does not constitutionalize every personal grievance within a government-run institution. Accordingly, the court will not consider plaintiff's "first incident of retaliation."

As a "third incident of retaliation," plaintiff claims that disciplinary charges were initiated against him in April, 1994 in retaliation for his comment that the children of a fellow student were "zebra children. In the first order, this court found that "even if plaintiff's speech was constitutionally protected, it plainly was not a substantial or motivating factor in defendants, decision" to suspend him. Thus, plaintiff is precluded from challenging his suspension as retaliation for his speech. Here, plaintiff does not allege that he was improperly suspended, but rather that the charges were improperly initiated against him.

Plaintiff's comment, though reprehensible, touches on a "matter of public concern" within the purview of the First Amendment. Thus, the court considers whether the complaint sufficiently alleges causation. Plaintiff must make "specific, nonconclusory allegations reasonably linking" his speech to his prosecution. Bailey v. Floyd County Bd. of Educ., No. 95-6212, 1997 WL 33120, at *8 (6th Cir. 1997) (quoting Wright v. Illinois Dep't-of Children & Fam. Servs., 40 F.3d 1492, 1500 (7th Cir. 1994)). The alleged causal connection "must be sufficient to warrant the inference that the protected speech was a substantial motivating factor in the adverse employment action." Blum, 18 F.3d at 1010.

The complaint alleges the following facts to support an inference that plaintiff was prosecuted because of his speech. Plaintiff made the offensive remark on or about March 11, 1994. Around April 18, 1994, the law school notified plaintiff that disciplinary proceedings had been initiated against him. Among the charges against him were an unfounded charge of fraud in reporting his undergraduate grades and a charge of indecent or disorderly conduct stemming from his offensive remark. Defendants never investigated any charges against plaintiff until April, 1994, after they discovered plaintiff had made the offensive remark. At that time, defendants Ortiz and Prothro actively investigated plaintiff's record and past conduct and sought charges ~o serve as a basis for his prosecution.

The mere fact that protected speech precedes an adverse disciplinary action does not create an inference that the speech motivated the disciplinary action. See, e.g., O'Connor v. Chicago Transit Authority, 985 F.2d 1362, 1368 (7th Cir. 1993). Nevertheless, the court cannot say as a matter of law that the allegations in the complaint cannot support such an inference. Although it appears unlikely that plaintiff's speech motivated his subsequent prosecution, that determination is one of fact **better made on a motion for summary judgment.** The court notes that plaintiff bears the burden of demonstrating causation by a preponderance of the evidence. If plaintiff shoulders his burden, the burden shifts to defendants to show by a preponderance of the evidence that they would have prosecuted plaintiff absent the protected speech. Mount Healthy City Sch. Dist., 97 S. Ct. at 576; Blum v. SchlecTel, 18 F.3d 1005, 1010 (2d Cir. 1994).

Plaintiff's motion to amend his complaint is granted with respect to the "third incident of retaliation."

B. Defamation claim

Plaintiff alleges that defendants published the following allegedly defamatory statements concerning him and damaging his reputation. First, defendants sent plaintiff's transcript bearing the inscription "disciplinary suspension 06/27/9411 to numerous universities and people. Second, David Fields sent various letters to John Dady at the United States Department of Labor, saying (1) that plaintiff's statements that the law school would not accept funds to pay his tuition were false; (2) that plaintiff told Fields that he intends to move back to California; (3) that plaintiff was "found guilty" by the Disciplinary Committee after all the charges against him werepresented; (4) that plaintiff did not follow all the requirements for certification during his participation in the tuition grant program; (5) that the Dean reduced plaintiff's penalty for fraudulent misrepresentation of his grade point average to a one year suspension; (6) that the District Court dismissed plaintiff's case; and (7) that plaintiff was "prone to be untruthful . . . (as] underlined (when] he informed [the Department of Labor] that he was out of Law School this year because he decided to take a year off."

Truth of the allegedly defamatory statements is an absolute defense to a civil defamation action. See, e.g., Guccione v. Hustler Magazine, Inc., 800 F.2d 298, 300 (2d Cir. 1986); Commonwealth Motor Parts, Ltd. v. Bank of Nova Scotia, 44 A.D.2d 375, 355 N.Y.S.2d 138, 141 (Ist Dep't 1974), affld, 37 N.Y.2d 824, 377 N.Y.S.2d 482 (19751. The inscription on plaintiff's transcript that he was suspended from law school in June, 1994 is true, as plaintiff admits, and thus is not defamatory.

The court need not determine the truth of Fields, statements, because an executive official enjoys a qualified privilege with respect to any statement he makes while performing his official duties. Cf. Dunalewski v. Bellmore-Merrick Central High Sch. Dist., 138 A.D.2d 557, 526 N.Y.S.2d 139, 141 (2d Depl.t 1988). 4 Moreover, a qualified privilege "exists whenever the speaker and listener have a common interest in the subject matter of the communication." Thompson v. Maimonides Medical Center, 86 A.D.2d 867, 447 N.Y.S.2d 308, 310 (2d Dep't 1982) (citing Shapiro v. Health Ins. Plan of Greater N.Y., 7 N.Y.2d 56, 194 N.Y.S.2d. 509). Since Fields was at all relevant times an administrative officer of a state-run law school, and since his work included approving tuition grants, his communications with the appropriate official at the Department of Labor regarding a student's eligibility for tuition grants fall within the zone of privilege and cannot form the basis of an action for damages. Plaintiff cannot negate this qualified privilege because the complaint contains no allegation to support an inference of malice or ill will on the part of Fields. See Dunalewski, 526 N.Y.S.2d at 141. ,

Accordingly, the court denies plaintiff leave to amend his third claim.

C. Denied access to professor claim

Plaintiff's sixth claim, that he was illegally denied the right to speak with his professor about his grade, was dismissed in the second order. **The Supreme Court of New** York in Queens County also adjudicated and dismissed another challenge by plaintiff to his grade appeal. Willett v. City Univ. of New York Law Sch., No. 94-26220 (N.Y. Sup. Ct. Feb. 3, 1995); reh'g denied, No. 94-26220 (N.Y. Sup. Ct. Apr. 24, 1995), aff'd, No. 95-04839, - A.D.2d - (N.Y. App. Div., 2d Dep't, Sept. 23, 1996). This court must afford the state court decision full faith and credit and cannot relitigate a claim based on the same factual grouping. 28 U.S.C. § 1738; see, e.g., Kremer v. Chemical Constr. Corp., 456 U.S. 461, 481-82, 102 S. Ct. 1883, 1898 (1982); Allen, 449 U.S. at 94-95, 101 S. Ct. at 414. Thus the court denies plaintiff leave to amend his sixth claim.

In sum, plaintiff's motion for leave to amend his complaint is granted only with respect to the "third incident of retaliation" described in his first claim. Plaintiff's motion for leave to amend is denied for all other claims. Plaintiff is enjoined from filing any further suit in this court involving the claims dismissed in this action.

So ordered.

Dated: Brooklyn, New York
February 5, 1997
Eugene H. Nickerson, U.S.D.J.

EXHIBIT J

UNITED STATES DISTRICT COURT EASTERN DISTRICT COURT OF NEW YORK x

CV-94-3873 (EHN)
Stephan Willett,

Plaintiff,
AMENDED

V.COMPLAINT

The City University of New York, The City University of New York Law School at Queens College, Chancellor Ann Reynolds, Dean and President Haywood Bums, Dean of Students and Prosecutor Victoria Ortiz, Disciplinary Chairperson Jill Sofflah Ellijah, Personal Counsel to Chancellor Ann Reynolds, Records Officer, Bursar & Assistant Dean Dave Fields, Assistant to Dean of Students Jolli Brown, Professor Susan Markus, Professor David Nadvomey, Student Desiree Hopkins, Student Jay Rosenbaum.

Defendants, sued in their official and personal capacities. x

Plaintiff alleges:

PRELIMINARY STATEMENT

1. This action for damages is brought pursuant to 42 U.S.C. §1983.by plaintiff, Stephan Willett,.a 1997 law school graduate, not an employee from the City University of New York Law School at Queens College (the "Law School") who was wrongfully suspended from the publicly owned la school for one year after completing his first yea r of law studies. Administrators, acting under color of law, brought charges against plaintiff in retaliation for exercising his rights of free speech guaranteed by the First Amendment and for seeking to redress his grievances against the Law School in a court of law.

2. Defendants violated plaintiff's First Amendment rights by initiating a disciplinary hearing against the plaintiff in retaliation to (1) plaintiffs reference to a fellow student's child as "zebra child" and (2) plaintiffs suit against the Law School to redress his grievances in a court oflaw. Defendants resurrected baseless complaints that resulted from (3) plaintiffs questions to the Dean of Students and Prosecutor, Victoria Ortiz regarding the scope and performance of her employment duties, (4)

plaintiffs request for assistance from U.S. Senator Frank Padavan, President of the Law School, Haywood Bums and Bursar of the Law School, David Fields to require Mr. Fields to follow the federal Trade Readjustment Act (TRA) of 1974 billing procedures, (5) plaintiffs comments to librarians and defendants, Richard Pla and Julie Lim regarding the library's computer policies and (6) plaintiffs use of professor and defendant, Jean Zom's telephone.

JURISDICTION

3. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §1343(a) which provides for original jurisdiction of all suits brought pursuant to 42 U.S.C. §1983. Additionally, 28 U.S.C. §1331 confers original jurisdiction to the federal district courts over all cases brought pursuant to the Constitution.

VENUE

4. The events described in this complaint transpired in the County of Queens in the State of New York which is part of the judicial district of the United States District Court in the Eastern District of New York, thus venue is proper pursuant to 28 U.S.C. § 1391(b).

THE PARTIES

5. Plaintiff, STEPHAN WILLETT, resided in the County of Queens in the City and State of New York.

6. Defendant, CITY UNIVERSITY OF NEW YORK ("CUNY") is a public university operated under Articles 125 and 126 of the New York State Education Law §§6301, et. seq. (McKinney 1988)

7. Defendant, CITY UNIVERSITY OF NEW YORK LAW SCHOOL AT .QUEENS COLLEGE ("Law School") is one of the constituent schools of CUNY which is located in the county of Queens in the City and State of New York.

8. Defendant, CHANCELLOR ANN REYNOLDS, has at all times relevant to this complaint served as Chancellor of CUNY with her office in the County, City and State of New York. She is sued in her official capacity as chief administrator of CUNY.

9. Defendant, DEAN and PRESIDENT HAYWOOD BURNS, had at all times relevant to this complaint served as Dean of the Law School with

his office in the County of Queens in the City and State of New York. He is sued in his official capacity as chief administrator of the Law School. Mr. Bums is now deceased.

10. **Defendant, DEAN OF STUDENTS VICTORIA ORTIZ,** has at all times relevant to this complaint served as Dean of Students of the Law School and has acted as prosecutor in the disciplinary proceedings against plaintiff. Her office is in the County of Queens in the City and State of New York. She is sued in her official and personal capacities.

11. Defendant, DISCIPLINARY CHAIRPERSON and PROFESSOR JELL SOFFIAH ELLIJAH, has at all times relevant to this complaint been a member of the faculty of the Law School and served as Chairperson of the Faculty-Student Disciplinary Committee(the Disciplinary committee). Her office is in the County of Queens in the City and state of New York. She is sued in her official and personal capacities.

12. Defendant, DISCIPLINARY COMMITTEE MEMBER and PROFESSOR DAVID NADVORNEY has at all times relevant to this Complaint been a member of the faulty of the Law School and served as a member of the Disciplinary Committee. His office is in the County of Queens in the City and State of New York. He is sued in his official and personal capacity.

13. Defendant, DISCIPLINARY MEMBER and PROFESSOR SUSAN MARKUS, has at all times relevant to this Complaint been a member of the faulty of the Law School and served as a member of the Disciplinary Committee. Her office is in the County of Queens in the City and State of New York. She is sued in her official and personal capacity.

14. Defendant, DISCIPLINARY COMMITTEE MEMBER and STUDENT DESIREE HOPKINS, has at all times relevant to this Complaint been a member of the Disciplinary Committee. Her office is in the County of Queens in the City and State of New York. She is sued in his official and personal capacity.

15. Defendant, DISCIPLINARY COMMITTEE MEMBER and STUDENT JAY ROSENBAUM, has at all times relevant to this Complaint been a member of the Disciplinary Committee. His office is in the County of Queens in the City and State of New York. He is sued in his official and personal capacity.

16. Defendant, RECORDS OFFICER and BURSAR DAVE FIELDS, has at all times relevant to this Complaint been an administrative member of the Law School. His office is in the County of Queens in the City and State of New York. He is sued in his official and personal capacity.

17. Defendant, ASSISTANT DEAN OF STUDENTS JOLLI BROWN, has at all times relevant to this Complaint been an administrative member of the law school. Her office is in the County of Queens in the City and State of New York. She is sued in his official and personal capacity.

Freedom of Speech Cause of ***Action*** Facts

18. Plaintiff referred to a fellow student's child as a "zebra child" in a private conversation on about March 11, 1994 while at the Law School and a complaint was filed. A disciplinary hearing was initiated a month after the complaint was filed.

Grade *Point* Average ***Complaint***

19. Preceding the "zebra child" complaint, in October, 1994 plaintiff requested the defendant, Dean of Students and Prosecutor, Ms. Ortiz to assist plaintiff to prove his New York state residency at the Law School. Ms. Ortiz denied her assistance to plaintiff. Ms. Ortiz took offense at plaintiffs inquires into her job responsibilities and whether the requested assistance fell under those job responsibilities. Ms. Ortiz indicated to the plaintiff that she **took plaintiffs** inquiries "personally" and she disagreed with them.

20. Later in October, 1994 shortly after the conversation with plaintiff the Prosecutor, Ms. Ortiz demanded plaintiffs educational record from the Dean of Admissions, Carlton Clark. Mr. Clark denied Ms. Ortiz access to plaintiffs educational record because she would not give Mr. Clark a valid reason for requiring the plaintiffs record.

21. Prosecutor, Ms. Ortiz then waited until Mr. Clark was out of town and made a second request for plaintiffs educational record to Mr. Clark's

assistant who gave plaintiffs educational record to Ms. Ortiz. After this event Mr. Clark reported to President, Haywood Burns the method utilized by Ms. Ortiz to receive plaintiffs educational record.

22. On about November 11, 1994 within weeks of plaintiff's first contact with defendant, Prosecutor and Dean of Students, Ms. Ortiz she wrote a complaint to the Law School Admission Council (LSAC) requesting them to investigate misconduct regarding plaintiffs 3.0 Grade Point Average (GPA) reported on his resume that was attached to his application. Ms. Ortiz's complaint consisted of plaintiffs resume and plaintiffs UCLA transcript.

23. No other students from the law school had complaints filed against them or were prosecuted after they reported their GPA as did the plaintiff

.

24. In February, 1994 Ms. Ortiz personally informed plaintiff that there was "no" investigation into plaintiffs GPA. On about February 14, 1994 Ms. Ortiz received a letter from the LSAC that stated the plaintiff had not responded to the LSAC's investigation regarding Ms. Ortiz's complaint.

25. The GPA complaint was completely baseless and there were no facts to support the complaint or the charge.

Computer Use in the Library Complaints

26. In November, 1994 plaintiff asked defendant and Librarian, Richard Pla which computers he could use in the library offices. Mr. Pla stated the plaintiff could not use the computers in the offices that belonged to library staff, unless the staff who they belonged agreed.

27. Plaintiff was critical to Mr. Pla regarding the library's policy not to allow students to use computers in the library offices. Mr. Pla disagreed with plaintiff's criticism and he acted as if he did not like it, he acted as if he did not welcome it, he acted as if he did not care, he acted as if he could do nothing about the policies and that the policies were not his responsibility.

28. Subsequently, the plaintiff used the computer, which he later learned was on the reference desk, that was not designated or labeled as a reference desk and was not in an office, but it was located in the library. Mr. Pla then stated to the plaintiff that he could not use the computer on the reference desk either.

29. Plaintiff expressed further criticism to Mr. Pla regarding the library policy that did not allow the students to use the reference desk computer. Mr. Pla again disagreed with plaintiff's criticism and he acted as if he did not like it, he acted as if he did not welcome it, he acted as if he did not

care, he acted as if he could do nothing about the policies and that the policies were not his responsibility.

30. Defendant, Ms. Ortiz requested defendant, Mr. Pla to provide a report to her regarding the computer usage incidents. Mr. Pla later wrote plaintiff "wanted to debate the law library's policy concerning restricted access to its computers".

31. Mr. **Pla at a disciplinary hearing in May, 1994 falsely testified** that the **plaintiff had used** computers in -the library after he had directed the plaintiff not to use them.

32. In November, 1993 plaintiff asked defendant and Librarian, Julie Lim if he could use the computer in her office. Ms. Lim stated the plaintiff could not use the computer in her office. Plaintiff expressed criticism to Ms. Lim regarding her policy to not allow plaintiff to use her computer.

33. Ms. Lim disagreed with plaintiff's criticism and she acted as if she did not like it, she acted as if she did not welcome it, she acted as if she did not care, she acted as if she could do nothing about it and it was not her responsibility.

34. Subsequently, on November 19, 1993 the plaintiff asked Ms. Lim why the computer on the reference desk had been turned off over the Thanksgiving weekend, 1993 and if he could use the reference desk computer. Ms. Lim did not state why the computer had been turned off over the weekend, but stated the plaintiff could not use the reference desk computer.

35. Plaintiff expressed criticism to Ms. Lim regarding the library policy to not allow students to use the reference desk computer. Ms. Lim again disagreed with plaintiff's criticism and she acted as if she did not like it, she acted as if she did not welcome it, she acted as if she did not care, she acted as if she could do nothing about the policies and that the policies were not her responsibility.

36. Defendant, Ms. Ortiz requested defendant, Ms. Lim to provide a report to her regarding the computer usage incident.

37. Ms. Lim at a disciplinary hearing in May, 1994 falsely testified that the plaintiff had used a computer in the library after she had directed the plaintiff not to use them.

38. Plaintiff approached the defendant and Library Director, Gregory Koster on his own accord to discuss the library's computer usage policy and expressed his disagreement with the policy.

39. Mr. Koster stated that there was nothing he could do to change the library policy or help the plaintiff with his computer needs. Mr. Koster disagreed with plaintiff's criticism and he acted as if he did not like it, he acted as if he did not welcome it, he acted as if he did not care, he acted as if he could do nothing about the policies and that the policies were not his responsibility.

40. Defendant, Ms. Ortiz requested the defendant and Library Director, Mr. Koster to provide a report to her regarding the computer usage incidents.

41. Defendant and Library Director, Mr. Koster falsely reported that he had spoken to the plaintiff a second time regarding the library policy not to allow students to use their computers.

42. Plaintiff did not speak to defendant and Library Director, Mr. Koster a second time about the library's policy regarding computer usage.

43. Defendant and Library Director, Mr. Koster falsely testified that he spoke to the plaintiff a second time regarding the library policy not to allow students to use their computers.

44. Defendant and Library Director, Mr. Koster falsely testified that individuals had spoken to the plaintiff ten (10) times regarding the library's policy to not allow students to use their computers and that the plaintiff could not use the desired computers in the library.

45. The computer usage complaint was completely baseless and there were no facts to support the complaint. Defendant, Dean of Students and Prosecutor, Ms. Ortiz and defendants and librarians, Mr. Pla and Ms. Lim used the baseless complaint and the disciplinary hearing to retaliate against plaintiff.

Phone Usage Complaint

46. Plaintiff used defendant and Professor, Jean Zorn's office telephone in November, 1993.

47. On about February 8, 1994 the plaintiff used defendant and Professor, Ms. Zorn's office phone again.

48. On about February 15, 1994 defendant and Professor, Ms. Zom wrote a statement to Defendant, Prosecutor and Dean of Students, Ms. Ortiz that falsely stated Ms. Zom told plaintiff in November, 1993 that she minded if plaintiff used her phone.

49. Defendant, Ms. Zom at a disciplinary hearing in May, 1994 falsely testified that she told the plaintiff in November, 1993 not to use her phone again.

50. The phone usage complaint was completely baseless and there were no facts to support the complaint. Defendant, Dean of Students and Prosecutor, Ms. Ortiz and defendant and Professor, Jean Zom used the baseless complaint and disciplinary hearing to retaliate against plaintiff. Entrance into **President's Office Complaint**

51. Plaintiff was directed to return to speak with defendant and President, Mr. Bums to determine whether the Law School would follow the federal Trade Act of '74 (TRA) billing procedures.

52. Plaintiff entered defendant and President, Mr. Burns office to discuss his request to him, to U.S. Senator Frank Padavan, and to Bursar, Mr. Fields to require defendant and Bursar, Mr. Fields to follow the billing procedures for the federal Trade Act of '74 (TRA) that the plaintiff qualified.

53. A report was filed by Security Director, Alonzo Prothro in February, 1994 which alleged plaintiff disobeyed an order to not enter defendant, President, Haywood Burns' office.

54. Defendant, Ms. Ortiz did not have the secretary, Pat Viglione who allegedly gave the plaintiff the order to not enter Mr. Bums office testify at the disciplinary hearing. Instead, the Prosecutor, Ms. Ortiz had defendant and Acting Director of Development, Andrea Shapiro Davis testify that she had heard the secretary, Pat Viglione give the order to the plaintiff.

55. There was no order given to the plaintiff to not enter defendant and President, Mr. Burns office. '

56. Plaintiff personally requested the secretary, Pat Viglione to testify, but she refused and she said she would be of "no help" to the plaintiff.

57. Mr. Bums was in his office when the plaintiff allegedly had illegally entered his office. Plaintiff also personally requested President, Mr. Burns to testify and Mr. Bums stated he would not testify.

58. Defendant, Andrea Shapiro Davis at a disciplinary hearing in May, 1994 falsely testified that the secretary told the plaintiff in February, 1994 not to enter the President's office.

,59. The illegal office entry complaint was completely baseless and there were no facts to support the complaint or the charge. The defendant, Dean of Students and Prosecutor, Ms. Ortiz, defendant and Acting Director of Development, Andrea Shapiro Davis and defendant and President, Mr. Bums used the baseless complaint and the disciplinary hearing to retaliate against plaintiff.

"Zebra" Comment Complaint

60. Plaintiff made a public comment in reference to a fellow student's child as a "zebra child" in a private conversation on about March 11, 1994 while at the Law School and a complaint was filed.

61. The "zebra" comment complaint was baseless and there were no facts to support the complaint or the charge. The defendant, Dean of Students and Prosecutor, Ms. Ortiz used the baseless complaint and the disciplinary hearing to retaliate against plaintiff.

Plaintiff's Lawsuit Against the Law School

62. Plaintiff appealed his New York residency determination made by defendant, CUNY to Queens County Small Claims court on about March 15, 1995 and was awarded a judgment for damages on April 18, 1994.

63. The defendants used the "zebra child" comment disciplinary hearing to retaliate against plaintiff because of his lawsuit.

Plaintiff's Speech Prompted the Disciplinary Hearing

64. Plaintiff was never notified of an investigation during the five months before the charges were brought against him. Plaintiff was never questioned about the alleged incidents that made up the charges after they occurred or during the five months after the first incident and before the disciplinary hearing was initiated.

65. Defendant, Ms. Ortiz and the Security Director, Mr. Prothro requested each individual that complained about the plaintiff to write down what occurred. Each of these individuals' reports were later used as complaints against the plaintiff and the prosecutor, Ms. Ortiz demanded each individual testify.

66. Defendant and Assistant to the Dean of Students, Jolli Brown and Dean of Students and Prosecutor, Ms. Ortiz did not investigate the charges initiated against the plaintiff. Dean of Students and Prosecutor, Ms. Ortiz falsely stated that-Defendant and Assistant to the Dean of Students, Jolli Brown had notified the plaintiff about the complaints and the investigation.

67. There was no intent by the Law School to hold a disciplinary hearing until plaintiffs "zebra" comment was recognized and the lawsuit against the Law School was initiated.

68. Plaintiffs "zebra" comment and lawsuit occurred the second Week of March, 1994 about a month before disciplinary charges were sent to the plaintiff. The baseless complaints consisting of a GPA complaint, plaintiffs entrance into the President's office complaint, the computer usage in the library complaint and the usage of the professor's phone complaint were resurrected in April, 1994 to serve as the basis for a disciplinary hearing. The actions of the defendants in bringing the disciplinary charges were in retaliation for plaintiff exercising his Free Speech rights and his First Amendment right to petition the courts for redress of grievances.

A Retaliatory Disciplinary Hearing was Initiated

69. On about April 18, 1994 plaintiff was notified of disciplinary charges that were initiated against him by defendant, Dean of Students and Prosecutor, Ms. Ortiz and that a disciplinary hearing would be held on May 5, 1994.

70. Charges against plaintiff included (1) a baseless complaint and charge of fraud due to plaintiffs reported GPA on his resume sent with his application, (2) a baseless complaint and charge due to plaintiffs entrance into defendant and President, Mr. Burns office, (3) a baseless complaint due to plaintiffs use of computers in the library, (4) a baseless complaint due to the plaintiffs use of a professor's telephone and (5) a baseless complaint and charge due to plaintiffs referral to a student's child as "zebra child". Prosecutor, Ms. Ortiz offered a stipulation agreement in the middle of the disciplinary hearing on May 13, 1994 to

drop the charges against plaintiff and change plaintiff's only 7" grade to a "P" if plaintiff agreed not to return to the Law School to continue his studies.

72. Six of the eight incidents the plaintiff was charged resulted in not guilty determinations after no defense was put forth to any of the charges.

73. The disciplinary hearing was purposefully initiated by the defendants in retaliation to plaintiffs "zebra" comment to a fellow student and due to his suit for redress of grievances against the Law School. Baseless complaints resulting from plaintiffs questions to Defendant, Dean of Students and Prosecutor, Ms. Ortiz regarding her job responsibilities, the plaintiffs comments to librarians and defendants, Richard Pla and Julie Lim regarding the library's computer policies, plaintiffs use of defendant and Professor, Ms. Zorn's telephone and plaintiffs "zebra" comment to a fellow student were used to justify the disciplinary hearing.

Law

74. By virtue of the facts presented the defendants have acted under color of law as public officials to intentionally and wrongfully initiate a disciplinary hearing against the plaintiff in retaliation to plaintiffs public comments based on defendants' regulations, widespread practices, custom and usage in violation of the First Amendment and 42 U.S.C. § 1983.

RELIEF

WHEREFORE, plaintiff demands compensatory damages of $100,000 against each defendant in their individual capacity. Plaintiff demands compensatory damages of $100,000 against each defendant in their official capacity. Plaintiff demands punitive damages of $1,000,000 against each defendant in their individual capacity. Plaintiff demands declaratory relief that his CUNY Law School transcript be expunged of the disciplinary action taken against him.

Dated: October 6, 1997
Stephan Willett
Plaintiff pro se
133A Colonial Drive
Harrisonburg, VA 22801
(540) 574-2291

EXHIBIT K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STEPHAN WILLETT,

Plaintiff,

MEMORANDUM

AND

-against-ORDER

THE CITY UNIVERSITY OF NEW YORK, THE CITY UNIVERSITY OF NEW YORK LAW SCHOOL AT QUEENS COLLEGE, CHANCELLOR ANN REYNOLDS, DEAN OF STUDENTS AND PROSECUTOR VICTORIA ORTIZ, DISCIPLINARY CHAIRPERSON JILL SOFFIA ELIJAH, PERSONAL COUNSEL TO CHANCELLOR ANN REYNOLDS, RECORDS OFFICER AND BURSAR DAVE FIELDS, ASSISTANT TO DEAN OF STUDENTS JOLLI BROWN, PROFESSOR SUSAN MARKUS, PROFESSOR DAVID NADVORNEY, STUDENT DESIREE HOPKINS, STUDENT JAY ROSENBAUM,

Defendants.

STEPHAN WILLETT 133A Colonial Drive Harrisonburg, VA 22801 plaintiff pro se

DENNIS C. VACCO Attorney General of the State of New York (Gary P. Weinstein, of counsel) 120 Broadway New York, NY 10271 for defendants

NICKERSON, District Judge:

Plaintiff pro se brought this action in August 1994 under 42 U.S.C. § 1983 alleging that he was wrongfully suspended from the City University of New York Law School at Queens College (the Law School) in violation of the First and Fourteenth Amendments.

Plaintiff filed several amended complaints, some without leave of court, in which he added new claims and new parties. On March 22, 1996 the

court dismissed the majority of plaintiff's claims. On February 18, 1997 the court enjoined plaintiff from filing any further suit involving those claims, and granted him leave to amend his complaint only with respect to the -third incident of retaliation" described in his first claim. Defendant now moves to dismiss plaintiff's last amended complaint.

Plaintiff enrolled in the Law School in the fall of 1993. On April 13, 1994 Dean of Students Victoria Ortiz notified him by certified and regular mail that five charges were being brought against him in a May 5, 1994 disciplinary hearing. He admitted receiving the notice on "approximately" April 15, 1994. The notice set forth the charges, the possible penalties, including suspension, and plaintiff's rights at the hearing. In substance, the charges were that plaintiff (1) committed misconduct and possibly fraud by misstating his undergraduate grade point average on his Law School application (the fraud charge); (2) stole books from two classmates (the theft charge); (3) wrongfully occupied and used certain Law School facilities and equipment (the trespass charge) ; (4) twice failed to comply with directions of Law School representatives (the insubordination charge); and (5) committed "disorderly or indecent conduct" by harassing a student about the ethnicity of her children (the insult charge).

Plaintiff appeared at the May 5, 1994 hearing of the Student Disciplinary Committee, consisting of Faculty three faculty and two student members. The Committee held the hearing open until May 18, 1994 to allow both sides to submit documentary evidence. Plaintiff was not represented by counsel but by an advisor, first-year law student Bruce Biggins. In a "Decision of the Faculty-Student Disciplinary Committee" dated June 27, 1994 the Committee found that the fraud, trespass, and insubordination charges had been sustained. The Committee decided that plaintiff should be expelled for three years based on the fraud charge and suspended for one year on each of the trespass and insubordination charges. The Committee dismissed the theft charge. Because the Law School did not seek sanctions with respect to the insult charge, the Committee deemed it withdrawn.

On July 5, 1994 plaintiff appealed the Committee's decision to the Dean of the Law School, Haywood Burns. In a decision dated August 17, 1994 Dean Burns sustained the trespass and insubordination charges but dismissed the fraud charge, finding a lack of intent. He upheld the one-year concurrent suspensions. Plaintiff has now graduated from the Law School.

In summary, following a hearing before the Faculty Student Disciplinary Committee (the "Committee"), the Law School suspended plaintiff, in accordance with the Committee's determination, affirmed by the Dean of the Law School, that plaintiff had (1) wrongfully occupied and used certain Law School facilities and equipment and (2) twice failed to comply with directions of Law School representatives.

Plaintiff's most recent amended complaint, filed on October 7, 1997, charges that defendants abridged his freedom of speech by retaliating against him for enforcing his rights to make a derogatory comment about a fellow student's children. Plaintiff also adds allegations concerning claims earlier dismissed by the court. In its February 18, 1997 memorandum and order the court enjoined plaintiff from filing any further suit involving those claims. The court will therefore disregard all allegations appearing in numbered paragraphs 19 to 59 of the complaint.

In sum, plaintiff says that disciplinary charges were initiated against him in April 1994 in retaliation for his comment that the children of a fellow student were "zebra children." But even if plaintiff's comment constituted protected conduct under the First Amendment, there would be no violation of plaintiff's constitutional rights if defendants can show that the disciplinary hearing would have been brought even in the absence of the protected conduct. See Mount Healthy City Sch. Dist. v. Doyle, 429 U.S. 274, 287, 97 S. Ct. 568, 576 (1977).

Here there were four other charges brought against plaintiff, two of which were upheld. Plaintiff was not suspended because of the "zebra" comment that formed the basis of the insult charge, but because he was found guilty of the trespass and insubordination charges. Although plaintiff maintains that all the charges were baseless and brought only to retaliated against him, "a complaint which [sic] alleges retaliation in wholly conclusory terms may safely be dismissed on the pleadings alone." Flahert v. Coughlin, 713 F.2d 10, 13 (2d Cir. 1983).

In any event, the defendants are immune from suit. The Eleventh Amendment to the United States Constitution bars suits against the City University of New York, see Silver v. City Univ. of New York, 767 F. Supp. 494, 499 (S.D.N.Y.) (suits under 42 U.S.C. § 1983 barred), aff'd, 947 F.2d 1021(2d Cir. 1991); Ritzie v. City Univ. of New York, 703 F. Supp. 271, 276-77 (S.D.N.Y. 1989) (constitutional claims barred), as well as suits against the City University's senior colleges, including the Law School at Queens College, see, e.g., Chinn v. City Univ. of New York Sch. of Law at Queens College, 963 F. Supp. 218, 224 (E.D.N.Y. 1997). This jurisdictional bar "applies regardless of the nature

of the relief sought." Pennshurst State Sch. and Hosp. v. Halderman, 465 U.S. 89, 100-01, 104 S. Ct. 900, 908 (1984). Plaintiff's claim is dismissed as to the City University and the Law School.

The Eleventh Amendment also bars suits for money damages against individual defendants sued in their official capacity. See Kentucky v. Graham, 473 U.S. 159, 169, 105 S. Ct. 3099, 3107 (1985). The claim is dismissed as to the individual defendants sued in their official capacity.

The only remaining component of plaintiff's claim is brought against the ten individual defendants in their individual capacities. Personal involvement of d fendants in the alleged constitutional violation is a prerequisite to an award of damages under 42 U.S.C. 1983. See Williams v. Smith, 781 F.2d 319, 323 (2d Cir. 1986).

The complaint contains no allegations of personal involvement on the part of any of the other individual defendants in connection with the "zebra" comment. The claim is dismissed as to defendants Reynolds, Burns, Ellijah, Navordney, Markus, Hopkins, Rosenbaum, and Fields.

The complaint alleges that defendant Ortiz, the Dean of Students, "used the baseless complaint [concerning the "zebra" comment] and the disciplinary hearing to retaliate against plaintiff." It says that Ortiz asked each individual who had complained of plaintiff's behavior write a report of what happened and demanded that they testify at the hearing. The complaint says that neither Ortiz nor her assistant, defendant Jolli Brown, investigated the allegations.

Public officials are protected by the doctrine of qualified immunity from civil suits against them in their individual capacities arising from the performance of discretionary functions where their conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. See Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982).

When it is objectively reasonable for a public official to believe that his conduct is not in violation of a plaintiff's federal rights, that public official is protected by qualified immunity. See P.C. v. McLaucThlin, 913 F.2d 1033, 1039 (2d Cir. 1990).

There were five charges brought against plaintiff at the disciplinary hearing, of which the "zebra" comment was one. In light of the numerous complaints of plaintiff's behavior it was objectively reasonable for defendant Ortiz to believe that bringing a disciplinary proceeding against

plaintiff did not violate his constitutional rights. The allegation that neither Ortiz nor Brown investigated the complaints is conclusory, and in any event is contradicted by other allegations in the complaint concerning Ortiz' request that the individuals who complained of plaintiff's conduct make a written report.

Defendants Ortiz and Brown are protected from suit in their individual capacities by the doctrine of qualified immunity. The claim against them is dismissed.

Defendants' motion is granted. The complaint is dismissed with prejudice. The clerk of court is directed to close this case.

So ordered.

Dated: Brooklyn, New York
May 5, 1998

Eugene H Nickerson, U.S.D.J.

EXHIBIT P

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, United States Courthouse, Foley Square, in the City of New York, on the 4th day of May, one thousand nine hundred and ninety-nine.

Present: HONORABLE AMALYA L.KEARSE,
HONORABLE GUIDO CALABRESI,
Circuit Judges,
HONORABLE CHARLES S.HAIGHT, Jr.,
District Judge.

STEPHAN WILLETT,

Plaintiff-Appellant,

FILED: MAY 4, 1999

CV No.98-7836

CITY UNIVERSITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK LAW SCHOOL AT QUEENS COLLEGE, W. ANN REYNOLDS, Chancellor, HAYWOOD BURNS, Dean & President, VICTORIA ORTIZ, Dean of Students and Prosecutor, JILL SOFFIYAH ELIJAH, Professor, Disciplinary Chairperson, DAVID NADVORNEY, Professor, SUSAN MARKUS, Professor, DESIREE HOPKINS, Student, JAY ROSENBAUM, Student, DAVE D. FIELDS, Personal Counsel to Chancellor Ann Reynolds, Records Officer, Bursar and Assistant Dean, JOLLI BROWN, Assistant to Dean of Students,

Defendants-Appellees.

Appearing for Appellant: Stephan Willett pro se, Harrisonburg

Appearing for Appellees: Thomas Litsky, Ass't Att'y Gen., N.
Appeal from the United States District Court for the Eastern District of New York

This cause came on to be heard on the record from the United States District Court District of New York, and was argued by plaintiff pro se and by counsel for defendant

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that t judgment of said District Court be and it hereby is affirmed substantially for the reasons in Nickerson's Memorandum and order dated May 5, 1998.

We have considered all of plaintiff's contentions on this appeal and have found merit. The judgment of the district court is affirmed.

FILED: MAY 4, 1999

EXHIBIT Q

April 29, 199
Stephan Willett
133A Colonial Drive
Harrisonburg, VA 22801
(703) 660-9729
By Mail to Judge Krasee
Second Circuit Court of Appeals
40 Foley Square
NY, NY 10002

Re: Willett v. CUNY, Docket # 98-7836 Judge Krasee:

Please excuse my post argument letter, however, I feel compelled to express my concerns regarding one major topic you and your fellow justices seemed to be concerned about at argument.

The first topic you inquired into at oral argument was regarding collateral estoppel and res judicada which was not briefed to the court whatsoever. I honestly feel you are trying to find an easy way to deal with the mistakes made in this case. However, justice requires two more things of the court. First, review Judge Nickerson's decision dated February 5, 1997 (bates number 90 in joint appendix) which was decided because of the attorney general's motion to dismiss on collateral estoppel and res judicata grounds. I researched the collateral estoppel and res judicata issues extensively during my Christmas break of 1996 and I believe my 20-30 page brief is one of the best I have written. I am trying to locate the brief to forward it to you, however, the brief is in the extensive record that was send to the Second Circuit by the district court. The full record from the district court was sent to the Second Circuit because initially the appeal was processed by pro se office at the Second Circuit. If consideration is being given to collateral estoppel and res judicata issues the brief and the facts in it on this issue should be consulted. I believe I asked that my brief on the collateral estoppel and res judicata issues be consulted in my appeal brief based on the one minor issue referred to below, if it was necessary. Only one of the more minor issues on appeal was dismissed based on collateral estoppel, as discussed in my appeal brief.

Second, I placed the GPA complaint documents, that none of you seemed to review, in the joint appendix for a specific reason, which was their importance. Those documents in themselves illustrate the grave injustice (the falsifications magnify) that CUNY Law School has thrust upon me.

Lastly, I feel current events can and should be reflected upon in current appeals. At oral argument. I was not sure how the shootings at Calumbine High School near Denver, Colorado were relevant. However, when my mother recently shared with me that she and I had visited Columbine High School many years ago it made me think. I do not mean to be melodramatic, but, I have done all I possibly know and can do to try and move this court and other courts to do the right thing and I honestly think the courts and you know what is the right thing. The frustration created in the teenagers at Columbine High School were not from video games, movies, guns, etc., but from people and administrators not taking the time to understand these children and their issues. Due to my frustration with the courts in this case, in my appeal brief to you, I blatantly asked that the relevant facts plead be recognized and that the mistakes be corrected (whether in my favor or not). Basically, I was asking that the time be taken to understand the issues in this case, therefore, a sense of piece could be achieved and understood within myself.

I hope you will take the time to do the right thing.

Thank you.
Sincerely,

Stephan Willett

EXHIBIT R

THE CUNY SCHOOL OF LAW NEWSPAPER

HATE SPEECH HEARD ON CAMPUS

BY JONATHAN MELTZ, EXECLUIVE EDITOR IN CHIEF

CUNY, arguably as diverse and accepting as any law school in the country, was recently reminded that discrimination and hate speech based on race and sexual orientation can materialize anywhere, even within the halls of 65-21 Main Street.

One recent incident involved the placement of a flyer, defaced with Ku Klux Klan symbols, on the seminar desk of student Tracey Bing-Hampton. The Student had been working in the campaign to bring attention to Mumia Abu-Jamal, a Philadelphia black activist and former radio reporter, who was appealing his conviction for the murder of a police officer. Another recent incident involved a vulgar statement referring to intercourse with young, children which written on the office door sign-up sheet of Ruthann Robson, a lesbian faculty member. Another incident, although not hate speech, also disturbed the community. A flyer advertising free kittens was defaced with the line "They make great stew."

The CUNY Faculty made the bate speech the first topic of discussion at its September 7th meeting. The group considered all three incidents to be hate speech. Acting Dean of Students Frank Deale suggested that professors take a few minutes during class to condemn the actions and say whatever is appropriate. "The main thing is to get the message across", said Deale. Professor Dinesh Khosla,

students are angered
and embarrassed by
the incident.

angered that incidents like this happen every year, suggested putting up a reward of $500 to $1,000 for information identifying the responsible individual. He even offered to use his own money if School f6nds were not available.

Although most assumed a student was responsible for the hate speech, one voice cautioned others not to jump to conclusions. "it could be someone other than a student", said Administrator Mary *(Continued on Page 2)*

HATE SPEECH

(Continuedfront Page 1)

Nevins. However, her comment was quickly. dismissed by the group.

According to Dean Kristin Booth Glen, the student handbook is abstract on the issue of hate speech.. "It may, be worthwhile to define acceptable behavior, she..said.. Because she has heard so many. students are concerned about due process, Dean Glen proposed developing a clear policy for the students which, would "put them on notice" Glen also distributed a memorandum to the. law school community on September 11. In the memo, she stated her intention to undertake' study and discussion of whether, and/or how the policy can be

Professor Dinesh Khosla
..suggested putting
up a reward of $500
to $1,000....

Dean Glen also -
threatened to deal
with person or persons
responsible for the recent actions "in the severest manner possible."

strengthened and more emphatically publicized. Dean Glen also threatened to deal with the person or person's responsible for the recent actions "in the severest manner possible".

Predictably, students are angered and, embarrassed by the incident. Many have written to The Brief to show their support for the affected individuals and to condemn those responsible. CUNY Security and Administration are still investigating the incidents, but have no suspects., If you have any info~mad6n, 'you' can anonymously call The Brief at 5754314 or contact Acting Dean of' Students Frank Deale..

HATE SPEECH BECOMES BIAS CRIME

Queens DA and NYCPD Sias Unit Get Involved

BY BRIEF STAFF

CUNY administration planned to quietly deal with the recent incidents of hate speech with class discussions and stern warnings, along with an internal investigation. However, the quiet situation grew quite loud and became very serious as another incident occurred on-campus, thus forcing the administration to go public and externally recruit law enforcement to deal with the problem.

According to the New York City Police Department Public Information Office, on Thursday, September 14 at 2:15 p.m., the president of the Gay and Lesbian Association received a note in her mailbox which made comments against her sexual preference. According to a memorandum from Dean Kristin Glen, the note also threatened rape and physical violence. Sources report the note contained the following "WE want to fuck you lesbo until you beg for more and bleed". Dean Glen wasted no time after this most recent incident and contacted Queens County District Attorney Richard Brown. The District Attorney assign d high, level; members of his staff to work with the law school in the investigation. A detective from the New York Police Department's Bias Crime Unit was scheduled to Visit the school on September 21 to continue the investigation.

Anyone with information about this incident or any of the previous incidents may anonymously call *The Brief* at (718) 575-4314.

EXHIBIT S

Virginia News
Blue hair ruled least of offenses
By Larry O'Dell
ASSOCIATED PRESS

RICHMOND - A Surry County High School student whose blue hair got him suspended in a safety crackdown can finish the school year but must submit to a daily weapons search before entering the building, a judge ruled yesterday.

US. District Judge Robert Payne granted 16-year-old Kent McNew's request for a temporary injunction. Kent has filed a lawsuit challenging his suspension as unconstitutional, and Judge Payne said he expects to try the case before the beginning of the next school year if a compromise is not reached.

Judge Payne said the Surry County School Board could have suspended Kent for a multitude of disciplinary problems but made the mistake of only citing his refusal to dye his blue hair to a more natural color.

A 4th US. Circuit Court of Appeals ruling in another case held that students cannot be suspended solely because of their hairstyle.

According to a lawsuit filed on Kent's behalf by the American Civil Liberties Union of Virginia, the sophomore dyed his hair blue in Decemb6r but received no complaints from school officials until Gov. James S. Gilmore III called for a crackdown on unusual behavior in the wake of the Littleton, Colo., school shootings.

School officials said Kent upset classmates by expressing approval of the Colorado shootings and wearing a tattoo that says "Kill 'emall'". He also sometimes wore garish makeup and women's clothing, and rigged a boobytrap intended to drop a brick on a teacher's head, officials said. The brick missed its target.

Such actions "are absolutely inappropriate and there's no place for them:' Judge Payne said. He said Kent probably should have been suspended for some of those actions, but the letter sent to the teen-ager and his mother cited a rule that forbids unusual or unique hair colors." Kent was told he could return to school only when his hair was returned to a more natural color.

Judge Payne said he agreed with what the school board was trying accomplish, but "you can't regulate on the basis of color of hair."

In making the daily weapons search a part of his order, the judge said he had to take into consideration the harm a temporary injunction could do to the schools.

"School boards must take control of these schools and must provide a safe environment," he said. "The constitutional rights of students, while not forfeited at the schoolhouse door, are limited."

Kent said after the hearing that he was not upset about being ordered to submit to a weapons search. -"I'm just glad to be going back to school:' he said.

"We're going to do what's necessary to protect our students:' School Board Chairman M. Sherlock Holmes said. There are only two more full days of school - today and Monday - and then half-day schedules for exams through next Friday.

Exhibit T

94-cv-3873
CORRECTED EDNY
UNITED STATES COURT OF APPEALS Nickerson, DJ
FOR THE SECOND CIRCUIT
At a stated Term of the Urnted States Court of Appeals for the Second Circuit held at the United States Courthouse in the City of New York on the 10th day of may, one thousand nine hundred and ninety-five.
PRESENT:
FILED
MAY 1 0 1995

HON. THOMAS J. W-SMILL, HON. FRANK X ALTMARI, circuit judges.
- x
STEPHAN WILLETr,
Plairztiff-Appellant,
-v.-
94-7961
CITY UNIVERSITY OF NEW YOM- CITY UNIVERSITY OF NEW YORK LAW SCHOOL AT QUEENS COLLEGE; W. ANN REYNOLDS, Chancellor; HAYWOOD BURNS, D=; VICTORIA ORT14 Dean of Students; JILL SOFFIYAH ELIJAH, Pr6fessor, L)qfendgws-Appellees.
Appeal from the United States District Court for the Eastern District of New York.
This cause came to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued pro se by plaintiffappellant and by counsel for defendants-appel lees.
ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of the district court be and it hereby is AFFIRMED.

Willett v. CUNY No. 94-7961 Page 2
Plaintiff-appellant Stephan Willett ("Willett") appeals from a judgment of the United States District Court for the Eastern District of New York (Nickerson, L), denying his application for a preliminary injunction staying his suspension from defendant-appellee City University of New York Law School at Queens College ("CUNY Law School"). Willett, through counsel, filed a complaint in the instant action pursuant to 42 U.S.C. ~ 1983 on August 18, 1994 against the above-named defendants, alleging that his suspension following his first year of law school violated his First and Fourteenth Amendment rights.

The facts as found by the district court in its Memorandum and Order dated September 7, 1994 are as follows. On April 15, 1994, Willett, then a first year student at CUNY Law School, received a letter from Dean of Students Victoria Ortiz notifying him that the following disciplinary charges were being brought against him in a hearing on May 5: that he misstated his undergraduate grades on his law school application (the "fi-aud charge"); that he stole books from classmates (the "theft charge"); that he wrongfully occupied and used certain law school facilities and equipment (the "trespass charge"); that he failed on multiple occasions to comply with directions from law school personnel (the "insubordination charge"); and that he harassed a student about the ethnicity of her children (the "insult charge").

Willett appeared before the Faculty-Student Disciplinary Committee on May 5 without a lawyer and requested an adjournment. He was informed, over his objection, that the hearing would proceed on May 13 whether or not he had obtained counsel. By letter dated May 9, Willett sought a further adjournment, which was denied. The chair of the Committee was contacted by two lawyers claiming to represent Willett, but neither lawyer appeared at the May 13 hearing. Instead, Willett obtained the services of a fellow first-year law student, Bruce Biggins, who acted as his legal advisor. After several hours, the hearing was adjourned until May 25, at which time Biggins was granted permission to call Ortiz as a witness. After a further adjournment, on May 31 Biggins withdrew his request to question Ortiz, although the Committee examined Ortiz itself at the close of all evidence without allowing cross-examination from Biggins. The questions related primarily to document identification and the timing of events leading up to the hearing.

By decision dated June 27, 1994, the Committee found that the fraud, trespass, and insubordination charges had been sustained. The theft charge was dismissed, and the insult charge was deemed withdrawn because the Law School did not seek sanctions as to the alleged insult. The Committee expelled Willett for three years based on the fraud charge, and suspended him for one year on each of the trespass and insubordination charges. Willett appealed to the Dean of the Law School, who, by decision dated August 17, sustained the trespass and insubordination charges, but dismissed the fraud charge. He upheld the one year concurrent suspensions. Subsequent to bringing the instant action, Willett appealed the Dean' s decision to the Board Committee on Student Affairs and Special

Programs (the "Board"). By decision dated December 16, 1994, the Board sustained the Dean's determination and upheld the suspension.

The district court denied Willets request for an injunction to stay his suspension. Although it concluded that Willett had demonstrated irreparable hann absent the requested relief, the district court held that he failed to show either a likelihood of success on the merits, or sufficiently serious questions going to the merits and a balance of hardships tipping decidedly in his favor. King-v.Innovation BQQka, 976 F.2d 824, 828 (2d Cir. 1992) (describing requirements for injunctive relief). As to Willetfs claim that he was suspended for engaging in constitutionally protected speecl-4 the district court concluded that his speech was not a "substantial or motivating factor" in the decision to suspend him. See Mt. Healft City School Dist, Bd, of Educati 429 U.S. 274, 287 (1977). As to his claim that he was denied due process at his hearing because he was denied the assistance of counsel and was precluded from cross-examining Ortiz, the district court concluded that Willett received all the process he was due, relying on Winnick v. Manning, 460 F.2d 545, 549 (2d Cir. 1972), and Wasson y.Trowbridge,-, 382 F.2d 807, 812 (2d Cir. 1967). The district court found that he was afforded the opportunity to retain counsel and granted an adjournment for that purpose. Moreover, he was given the opportunity to call Ortiz as a witness, which he declined to do. Ms legal advisor provided "admirable" representation during the hearing. In summary, the district court concluded, the alleged defects in the hearing did not undermine the "fundamental fairness" of the process.

In order to prevail on his appeal from the denial of injunctive relief, Willett must demonstrate that the district court abused its discretion by either applying an incorrect legal standard or relying on a clearly erroneous factual finding. Sgg Awuaire Y.Canada Day Bottling Co., 24 F.3d 401, 409 (2d Cir. 1994). On appeal, Willett contends that the proceedings against him were time-barred and brought in retaliation for the exercise of his First Amendment rights, that additional charges were added at the hearing without proper notice, that he was wrongfully denied the right to cross-examine Ortiz, and that he was denied the right to counsel.

We reject Willett's argument based on the timeliness of the charges, which he claims should have been brought within 30 days after the filing of a complaint under the governing CUNY bylaws. Both the Dean and the Board reasonably rejected Willett's interpretation of the bylaw and concluded that the disciplinary proceeding was timely. We reject the remainder of Willett's arguments for substantially the reasons stated by the district court in its Memorandum and Order.

Based on the foregoing, the judgment of the district court is AFFIRMED.

HON. TEOMASI. NESKILL,

1A , do(-,
HON. FRANK X ALUMARI,
NA THIS SUMMARY Or-,Z:EP WILL NOT 02 Circuit Judges.
PU51,18HED IN ThE FEDFPP.I.
AND SHOULD NOT GE CITJO C~ 01, hl*"K"~111169
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SOM TM OR ANY OTHEA 0DUXT

Filed: May 10, 1995

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Before: Hon. Roger J. Miner Hon. Dennis G. Jacobs Hon. Fred 1. Parker Circuit Judges

WILLETT V CITY UNIVERSITY OF NY

Appellant pro se having filed a motion for preliminary injunction,

Upon consideration thereof, it is

94-cv-3873 EDNY Nickerson, DJ

-a--,

JUN 2 5 1996.

0 S'E

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Docket No. 96-7530

ORDERED that the motion for a preliminary injunction is denied and the appeal is

dismissed.

Dated: June 25, 1996

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IORGE LA14GE 3Z CLERK

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Geor e Lan e III, Clerk

By: #e& Arthur M. Heller Administrative Attorney

d-

Mandate Issued: June 25, 1996

Filed: June 25, 1996

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT UNITED STATES COURT HOUSE 40 FOLEY SQUARE NEW YORK 10007
GEORGE LANGE III CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the twenty- f ourt1day of July one thousand nine hundred and ninety-six.

Present:
on. Roger J. Miner
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JUL 24 1996
GE 0
0 C11R01\
on. Dennis G. Jacobs
on. Fred I. Parker
CIRCUIT JUDGES

Willett
v City University
96-7330

A motion for reconsideration having been filed herein by Steven Willett.

Upon consideration thereof, it is

Ordered that said motion be
and it hereby is DENIED.

GEORGE LANGE III, Clerk
BY: Beth J. Meador, Administrative Attorney

Filed: July 24, 1996

E.D.N.Y. 94cv3873 Nickerson.
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT
At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square. in the City of New
York, on the twenty-third dav of April
one thousand nine hundred and ninety-seven.

Stephan Willett.
Plaintiff-Appellant.
V. 97-7346
The City University of New York et al.

Defendants-Appellees.
This Court having determined sua Sponte that it lacks jurisdiction over this appeal because a final order has not been issued by the district court as contemplated by 28 U.S.C. § 1291, it is ordered that said appeal be and it hereby is dismissed. See Lawson v. Abrams, 863 F.2d 260. 262 (2d Cir. 1988) (order granting leave to amend complaint not a final decision since it allows the litigation to continue); Richardson Greenshields Securities, Inc. v. Lau, 825 F.2d 647, 650-51 (2d Cir. 1987) (order dening motion to amend pleading not appealable).
A TRUE COPY GEORGE LANGE 1Z CLERK
FTP
RKW JAC Circuit Judges
Mandate Issued:.4/23/97

Filed: April 23, 1997

EXHIBIT U

THE BRIEF

The CUNY School of Law Newspaper

STUDENT RECEIVES ONE YEARS SUSPENSION FOR USING SCHOOL COMPUTER AND PHONE

September 12, 1994

by Jonathan D. Libby, 2L

All he can do is wait.

But Stephan Willett, a would be second year student with hopes of continuing his studies this year, may have to wait a full year to return to the law school following his conviction in June by the school's disciplinary committee on three of five charges that he violated CUNY's By-Laws and/or sections of the state's Education Law. His conviction on the most serious charge, that of misconduct and possible fraud in his application for admissions to the law school, for which he had received a three year expulsion was later reversed by then-Dean Haywood Bums.

In July, the Law School Admissions Council, by unanimous vote, also reversed an earlier decision and determined that misconduct had not occurred in Willett's law school application.

Willett continues to fight, however. He awaits a decision by U.S. District Court Judge Eugene Nickerson (E.D.N.Y) from whom he sought a preliminary injunction on August 24 to force CUNY to enroll Willett until all administrative remedies have been *(See SUSPENSION, Page 2)*

SUSPENSION from page I

pending administrative appeal and court cases, but characterized Willett's contention that the charges filed against him were retaliation for a racially-charged statement he made to a fellow student as unequivocally "untrue."

Willett had been charged with indecent conduct for allegedly referring to the interracial children of another student as "zebra children,"

a comment Willett finds akin to the "water buffalo" comment made by a raw deal. University of Pennsylvania student in recent years. While the disciplinary committee found the alleged behavior "to be reprehensible and wholly unacceptable," the charge was dropped and Ortiz described the subject as a "moot issue."

However, in an August 9 letter to The Brief, Willett contends that "based on the last incident to transpire, which was the racial comment that occurred on I 1-March-94, the law school went back over my entire first year at the law school and have characterized eight incidents to compose [these] charges."

The disciplinary committee did convict Willett on charges that he attempted to use a computer and later did use a computer in the private office of a reference librarian in November of last year and that he used a phone in the office of Professor Jean Zorn without permission in February. Willett received a one year suspension for this charge. He also received a concurrent one year suspension for failure to comply with lawful directions issued by school officials stemming from the same incidents.

Willett described the incidents as "minuscule things with no recurring problem." He noted that despite not putting on a defense, he was cleared of nearly all of the allegations because the school failed to prove its case. He now regrets not putting on a defense.

"I wish that I had put on a defense," *he* said, "but them was no time to prepare since this was during finals and it probably would not have made any difference."

Second-year student Bruce

Biggins, Willett's student counsel at the disciplinary hearings. who has a written release from Willett allowing him to discuss the case, agreed. Biggins also felt disadvantaged by not having access to certain material. such as a copy of the hearing transcript prior to presenting closing arguments, to which the administration was privy. He agreed to assist Willett after it looked as though he was getting a

"It looked totally unfair," he said, "that's why I jumped in." Like Willett, Biggins also believes the school violated due process rights in terms of following school policies for bringing charges. Under the

CUNY By-Laws, the Dean of Students or her designee must conduct a preliminary investigation within 30 days of the filing of a complaint. Willett and Biggins contend that inherent in that is the prompt scheduling of a hearing thereafter and note that the school initiated a hearing on the first charge 154 days after first considering the complaint.

"It appears that the school can bring a charge at any time before graduation," Biggins said. He wondered how students would I if they knew the school could sit on a charge against a student until the day before graduation without ever letting the student know the charge existed. He called the school's policy "much too discretionary." Willett finds it ironic that a law school, especially one geared to law in the public interest, would so easily refuse to follow procedure and deny a student basic procedural rights.

While Willett maintains his innocence on all remaining charges and believes that several witnesses tied on the stand, he is prepared to return to the school which has given him so much grief. "Because of these charges, I have not been able to transfer to another *school,"* he said. "I want to be a lawyer. I intend to continue my faderal complaint, suing CUNY Law School and if I have to wait a year in order to continue my law studies, that is what I'll do."

For **now, all Willett can do** ... **is wait.**